

# **STATE CONTRACTING MANUAL**

**CURRENT AS OF JANUARY 2001**

Gray Davis, Governor

Aileen Adams  
Secretary of the Agency  
State and Consumer Services Agency

Jeff Marschner  
Chief Counsel, Office of Legal Services  
Department of General Services

The State Contracting Manual is a collaborative effort by the State Contracting Advisory Network (SCAN) made up of state employees dedicated to improving the state's contracting processes.

## **Notice**

This publication is designed to provide accurate and current information about the law and state policies. Readers should consult the relevant codes, rules, and cases when relying on cited material.

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California Department of General Services

## SUMMARY OF 1/01 CHANGES

Location	What Changes
Throughout Manual	Incorporate AB 2304 legislative changes consolidating PCC Code sections into one Article (Art. 4)
Table of Contents	Spell LAMBRA Correctly
Abbreviations & Acronyms	Include RFA
1.00	Clarifies the SCM does not cover real estate transactions
1.06	Insert Code cite
1.02	Delete reference for additional copies from OIS
1.07	<ul style="list-style-type: none"> <li>Change Std 204 title to Payee Data Record</li> <li>Insert References to Std 213 &amp; 215</li> </ul>
2.05	Grammar changes
2.07 -Table 2.2	<ul style="list-style-type: none"> <li>Make Audit clause agree w/ Std Language on Internet</li> <li>Include Certifications for: <ul style="list-style-type: none"> <li>Air/Water Pollution</li> <li>child labor/sweatshops</li> <li>Union organization prohibitions</li> </ul> </li> </ul>
Chap. 2 appendix A.1.b	<ul style="list-style-type: none"> <li>include Gov. Office approval on Legal Contracts</li> <li>reflect AG opinion 99-310 on 19130 application</li> </ul>
3.02.	<ul style="list-style-type: none"> <li>Incorporate SAM 1283 requirements</li> <li>Insert PCC citations</li> <li>Grammar</li> </ul>
3.05	Insert code cite
3.06	Replace entire Section
3.08	Insert code cite
3.09	<ul style="list-style-type: none"> <li>Clearly explain work covered by amendment</li> <li>Clearly define exact deletions</li> <li>Insert code cite</li> </ul>
3.10.1	Adds language that sole source approval is not required for emergency contracts
3.18 D.2	Renumber correctly
3.19	Correct SCM Reference
3.20	Clarify – competitive bidding not required
4.03	Move language from 4.04
4.04	Move exclusions to 4.03
4.05	Insert code cite
4.08	Change Std 204 Vendor reference to Payee
4.09	Insert code cite
Chapter 4 Appendix	<ul style="list-style-type: none"> <li>Correct Formatting</li> <li>Add Civil Service Justification</li> </ul>
5.02	Insert code cite
5.04	New Standard Process
5.05 A.2	Add Civil Service Consideration (19130) requirement
5.06	Changed limits to contracts awarded to small businesses
5.08	<ul style="list-style-type: none"> <li>Clarify competitive bid exemptions</li> <li>Insert DVBE participation requirement for exempt contracts</li> </ul>
5.10 E	Add language that 2 <sup>nd</sup> bidder cannot be awarded contract if 1 <sup>st</sup> contractor fails
5.15 G	Clarifies use of consultants on evaluation teams
5.17 Table 5.3	Secondary RFP 9 <sup>th</sup> Row. Correct S/B application for RFP secondary

5.25	Clarify OLS approval policy on RFP secondary when costs points are under 30%
5.30	<ul style="list-style-type: none"> <li>• Change DGS contacts</li> <li>• Grammar</li> </ul>
5.70	<ul style="list-style-type: none"> <li>• Emergencies do not require Sole Source</li> <li>• Add civil service justification as detailed in SCM 7.05</li> </ul>
5.75	<ul style="list-style-type: none"> <li>• Clarify advertising of amendments and that no agency action is required</li> <li>• Advertisement can be via Internet or Form 815</li> </ul>
5.80	<ul style="list-style-type: none"> <li>• Clarify that all special types of contracts (SAM 1233) needn't be bid</li> <li>• Contracts with CRPs justified under 19130(a) must be competitively bid</li> <li>• Contracts with CRPs justified under 19130(b) need not be competitively bid</li> <li>• Contracts for A/V equipment for a conference are exempt</li> <li>• Changed dollar limits</li> </ul>
6.00	Insert code cite
7.15	Dfeh Requirement is "in excess of", \$5,000 or more
7.20	Prompt Payment language revised
7.21	Independent Contractor information updated
7.70	Correct PCC citation
7.80	Grammar Correction
8.00 – 8.02	Changed DGS contact information
8.12	Gov. Agencies, colleges & Universities, and JPA's exempt from DVBE requirements
8.13, 8.14	Changed DGS contact information
8.16	Suggested language paragraphs for DVBE contracts
8.21	<ul style="list-style-type: none"> <li>• Changed DGS contact information</li> <li>• Adds tie breaking procedures for small businesses &amp; DVBEs</li> </ul>
8.22	Prompt payment of small business. Reference SCM 7.20
8.30	Changed DGS contact information
9.02	Contract Managers should ensure DVBE compliance language is included
9.05	<ul style="list-style-type: none"> <li>• Retention is 3 years from final payment under contract, not termination</li> </ul>
9.09	Grammar
Chapter 10	Increase threshold amount to \$117,000 throughout
10.05	No Sole Source process available for Public Works
10.15	<ul style="list-style-type: none"> <li>• Add Bond requirements of 100%</li> <li>• Add notation on subcontractor substitution</li> </ul>
11.00	Add DGS OLS review will include review of agency regulations
11.03	Outline the Types of A&E contracts
11.06	Language moved and renumbered to new section 11.08
11.08 (new)	Separate section for negotiating the contracts (moved from 11.06)

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**(Rev 1/01)**

**ABBREVIATIONS AND ACRONYMS**

<b>A &amp; E</b>	Architectural and engineering
<b>ADA</b>	Americans with Disabilities Act
<b>CCR</b>	<i>California Code of Regulations</i>
<b>CSCR</b>	<i>California State Contracts Register</i>
<b>DGS</b>	Department of General Services
<b>DVBE</b>	Disabled veteran business enterprise
<b>EDP</b>	Electronic data processing
<b>EZA</b>	Enterprise Zone Act
<b>GC</b>	<i>California Government Code</i>
<b>IFB</b>	Invitation for Bids
<b>IRS</b>	Internal Revenue Service
<b>LAMBRA</b>	Local Military Base Recovery Area Act
<b>LC</b>	<i>California Labor Code</i>
<b>MM</b>	Management Memo
<b>MOU</b>	Memorandum of Understanding
<b>MSA</b>	Master services agreement
<b>NLRB</b>	National Labor Relations Board
<b>OLS</b>	Office of Legal Services, DGS
<b>ORIM</b>	Office of Risk and Insurance Management, DGS
<b>OSBCR</b>	Office of Small Business Certification and Resources, DGS
<b>OSP</b>	Office of State Publishing
<b>PCC</b>	<i>California Public Contract Code</i>
<b>PD</b>	Procurement Division
<b>RESD</b>	Real Estate Services Division
<b>RFA</b>	<b><u>Request for Applications (Grants)</u></b>
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>SAM</b>	<i>State Administrative Manual</i>
<b>SCAN</b>	State Contracting Advisory Network
<b>SCM</b>	<i>State Contracting Manual</i>
<b>(SCM __)</b>	<i>State Contracting Manual</i> - refer to that chapter
<b>(SCM § __)</b>	<i>State Contracting Manual</i> - refer to that section
<b>SCO</b>	State Controller's Office
<b>SOW</b>	Scope of work
<b>SPB</b>	State Personnel Board
<b>TACPA</b>	Target Area Contract Preference Act
<b>UIC</b>	<i>Unemployment Insurance Code</i>
<b>USC</b>	<i>United States Code</i>
<b>W &amp; I</b>	<i>Welfare and Institutions Code</i>
<b>2CCR</b>	<i>Title 2, California Code of Regulations</i>

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**GLOSSARY**

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# 1. INTRODUCTION

## 1.00• INTRODUCTION

(Rev 1/01)

This State Contracting Manual (SCM) is provided as a resource to those persons in California state government who are involved in the state's contracting process. Contained herein are policies, procedures and guidelines whose purpose is to promote sound business decisions and practices in securing necessary services. This manual does not eliminate or override statutory requirements.

- A. This manual deals primarily with services, consultant services contracts, and interagency agreements. **It does not cover real estate lease transactions. DGS Real Estate Services Division (RES D) Professional Services Branch (PSB) should be contacted for information on these types of transactions at (916) 445-3626.** Overviews of public works contracts and architectural and engineering contracts are provided in chapters 10 and 11, respectively.
- B. Services contracts and Consultant Services contracts are both Personal Services contracts. Careful analysis must be given to the justification for using contracted personnel rather than using civil service positions within state government.

Note: DGS/OLS should be contacted for assistance in interpreting any section of this manual or when seeking a variance from established contracting requirements or practices.

- C. The specific provisions covering goods and services for electronic data processing (EDP) and telecommunications are covered in PCC §12100 et seq.
- D. The provisions for commodity purchases are contained in PCC § 10300 et seq.

## 1.01• TABLE OF CONTENTS

(Rev 11/99)

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## 1.02• AVAILABILITY OF THE MANUAL

(Rev 1/01)

One copy of this manual has been distributed to the primary contact person registered with the DGS/OLS, in accordance with the State Administrative Manual (SAM) § 1200).

The Internet version is available at [www.dgs.ca.gov/ols](http://www.dgs.ca.gov/ols).

## 1.03• GUIDE TO USAGE OF THE MANUAL

(Rev 3/97)

- A. Table 1.1 provides a guide for interpreting the contracting requirements presented in this manual.

Table 1.1 Required or Discretionary Language			
	Requirements “ <u>must</u> ,” “ <u>shall</u> ,” “ <u>mandatory</u> ,” or “ <u>required</u> ”	Limited Discretion “ <u>should</u> ”	Full Discretion “ <u>may</u> ,” “ <u>guidelines</u> ,” “ <u>recommended</u> <u>practices</u> ,” or “ <u>examples</u> ”
Source	Statutes, regulations, state policies, DGS policies required to meet legal responsibilities	DGS policies related to requirements or considered to be good business practices	Policies, procedures, and guidelines presented as helpful aids
Compliance	Must be followed unless exempt by law or granted exemption by DGS	Need to be followed unless the agency has a good business reason for variance	Optional
Documentation	Documentation required	Brief notation in the files suffices	None required
Consequence for noncompliance	Noncompliance may cause violation of law and/or rejection of contract by DGS	Noncompliance may affect compliance with a requirement or the advisability of the contract; DGS <u>may</u> question and request documentation	None

- B. Some mandatory requirements may be waived by DGS/OLS. Agencies seeking an exemption from any mandatory requirement should apply in writing to the Chief Counsel of DGS/OLS. Any written exemptions should be kept on file for audit purposes.

## 1.04• AGENCY RESPONSIBILITIES

Each state agency is responsible for its own contracting program. This responsibility includes ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, writing the contract in a manner that safeguards the state’s interests, and obtaining required approvals.

The role of DGS/OLS includes:

- Ratifying contracts (after approval by the state agency)
- Providing up-front assistance to agencies regarding contract problems
- Overseeing state contracting practices
- Improving the state’s contracting system
- Training state personnel in contract requirements

## 1.05 • CLASSIFICATION OF CONTRACTS

(Rev 11/99)

- A. Proper Classification of Contracts is necessary as a first step in determining which solicitation process is appropriate for the contract, and what elements are required to be in the contract.
- B. Consider the following concepts for each contract to determine the appropriate classification of the contract:
1. Is it an Architectural & Engineering (A&E) Contract? Are the services sought required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental service as defined in § 4525 of the Government Code?  
  
If so, the process contained in § 4525 of the Government Code must be followed.  
Note: An agency must have adopted regulations in order to utilize the process in G.C. § 4525.
  2. Is it a Public Works Contract? Does the work involve erection, construction, alteration, repair or improvement of a public structure as defined in § 1101 of the Public Contract Code?  
  
If so, the contract is a public works contract and further consideration must be made as follows:
    - a. Does the contract estimate exceed ~~\$250,000?~~ **\$400,000?**  
If so, only the agencies listed in the State Contract Act, and agencies specifically authorized by statute, are authorized to contract for this type of work. PCC §10106
    - b. Does the contract estimate meet the statutory definition of a "Project" (currently \$117,000)? PCC §10105  
If so, unless your agency is one of the agencies listed in the State Contract Act, approval (Form 23), must be obtained from General Services prior to contracting.
    - c. Does the contract involve development of plans and drawings? Even if the contract amount is less than the current \$117,000 limit for a "Project", approval must be obtained from General Services, (Form 23), prior to contracting
  3. Is it a contract for the purchase of a Commodity or Goods? Does the contract have as its sole or main purpose the buying of some tangible items, such as equipment, parts, supplies, or other merchandise?  
If so, further consideration must be made to determine whether any services are being provided as well, and which has the predominant value to the contract; the items being purchased, or the services being rendered? The dollar value associated with the services provided, or the value of the goods being supplied are factors that should be considered. Example: A contract for painting can include purchase of the paint, but the main value of the contract is for the application of the paint. This would be a services contract.

4. Is it an Information Technology (I/T) Contract? Does the contract have as its sole or primary purpose an information technology procurement or activity?  
If so, further consideration must be made. If the contract is determined to be an I/T activity, the provisions of the State Administrative Manual in § 5200 must be adhered to. I/T activities typically require some documentation either by Summary Fact Sheet, or Feasibility Study Report. These may require approval by the Department of Information Technology (DOIT) and the Department of Finance, Technology Investment Review Unit (TIRU). When determining whether a contract is for I/T you must consider the main purpose or value of the activity, and whether information technology skills and knowledge are involved. Example: A contract for installing cable for a local area network includes purchase of the wiring and plugs, but also includes installation. The primary value is getting the cable installed, so this would most likely be a services, or Public Works contract if it is being done in a public structure.
5. Is it a Contract for non-I/T services? Does the contract have as its sole or primary purpose providing non-I/T services? Services contracts are those that have someone doing something. Many Service Contracts are easily identified, e.g. waste removal services, cleaning services, etc. However, some Services contracts are more difficult to determine, especially when they involve other disciplines as well. Example: A contract for carpeting may involve purchase of carpet (commodity) as well as removal of old carpet and pad (Service), and installation of new carpet and pad (Service). The determining factor should be what is the primary focus of the contract and expertise of the contractor. Purchase of the item, or proper installation?
6. Is it a Consulting Services Contract? Does the contract have as its sole or primary purpose some type of recommendation, or product of the mind? Are the unique knowledge of the individual and intellectual abilities of critical importance to the success of the contract?
7. Is it a Contract for Legal Services? A legal services contract is one for hiring the services of a licensed attorney, either as an individual, or affiliated with a firm. The primary purpose is drafting a legal opinion, or litigation services required of an attorney. Example: A legal firm is hired to compile a list of legislative bills dealing with elderly health care. This would most likely be a services contract as there is little legal interpretation involved.

## **1.06 • CIRCUMVENTION OF RESPONSIBILITIES PROHIBITED**

(Rev 1/01)

Statutes, regulations, and policies governing the state's contracting process are designed to protect the state's interests. Therefore, it is not appropriate to seek artificial exceptions to contracting requirements or to seek loopholes. In particular, circumvention of required competitive bidding or contract approval is illegal. Pass-through contracts in which the vendor or another governmental agency is doing something that your agency cannot lawfully do directly, such as avoiding competitive bidding, is a common type of circumvention.

**(PCC § 10340)**

## 1.07 • STANDARD CONTRACTING FORMS

(Rev 1/01)

- A. The most commonly used forms in the Service Contracting process are listed below. Check the Internet site for the Office of State Publishing (OSP) at [www.dgs.ca/gov/osp](http://www.dgs.ca/gov/osp) to verify you are using the most current revision.

Form Number – Used for
STD 2 – First Page for State Contracts <b>(Also see Std 213 below)</b>
STD 4 - Consultant Evaluation
STD 13 - Interagency Agreements <b>(Also see Std 213 below)</b>
STD 15 - Contract Summary and Transmittal Form <b>(Also see Std 215 below)</b>
STD 16 - DFEH Contract Reporting Form
STD 17A - Non-discrimination Certificate
STD 18 - Non-discrimination Certificate (construction)
STD 19 - Non Compliance Certification
STD 21 - Drug Free Certification
STD 23 - Request for Project Approval (Construction)
STD 204 - Payment <u>Payee</u> Data Record
<b>STD 213 – First Page for State Contracts and Interagency Agreements (replaces STD 2 and STD 13 under new process)</b>
<b>STD 215 - Agreement Summary (replaces STD 15 under new process)</b>
STD 807 - Payment Bond (Construction)
STD 810 - Contract Report (Small Business Participation)
STD 811 - Small Business Preference Request (Construction)
STD 815 - Contracts Register Advertising Form
STD 821 - Request for Advertising Exemption (also for Sole Source Requests)
STD - 830 TACPA Request Form
STD - 831 EZA Request Form
STD - 832 LAMBRA Request Form

- B. Agencies are not authorized to make revisions to the Standard Forms without prior approval from DGS. Changes to standard forms require the approval of the OSP Forms Management Unit.

## 2. THE BASIC CONTRACTING PROCESS

### 2.00 • INTRODUCTION

This chapter describes the basic contracting process and the principal components of the process.

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### 2.02 • DEFINITION OF A CONTRACT

“A contract is an agreement to do or not to do a certain thing” (CCC §1549). It gives rise to an obligation or legal duty enforceable in an action at law (CCC §1428). It sets forth terms, conditions, and the statement of all work to be performed.

### 2.03 • PRELIMINARY CONSIDERATIONS

The contracting process starts with the recognition of a need for services. From that point the process varies depending on the type of services needed. Key considerations include:

A. Time

When the services are needed is a critical factor. Sufficient time must be allowed for internal agency process as well as required external review(s). (See SCM 4.)

B. Civil Service

The State Constitution generally requires contracting to be limited to those services that cannot be performed by civil service employees except as provided for in GC §19130.

C. Authority and Approvals

Many decisions require authorized approval, including final, formal approval either by the agency or by DGS. Some contracts are legally exempt from DGS approval. Some may require approval by other agencies. (See SCM 4.)

## D. Funding

Funding for the services is a crucial component and must be identified.

## E. Competitive Bidding

Services obtained from the private sector are typically subject to a competitive selection process. Competitive bidding is often a complex and time-consuming process with specific legal requirements. (See SCM 5.)

## F. Management of the Contract

The final step of managing the contract must be anticipated and planned during the contracting process. Deliverables must be clearly described so that they can be evaluated and payments can be approved. (See SCM 9.)

## 2.04 • OVERVIEW OF THE CONTRACTING PROCESS

The following Table (2-1) gives a general overview of the State's contracting process. The process necessarily varies greatly depending on the circumstances of the specific contract. Table 2.1 is provided to help in planning your contract.

Table 2.1  
The Contracting Process

	IMPORTANT FACTORS	DECISIONS TO BE MADE
1. Someone within the agency must identify the need for a service, whether the need is for a routine renewal of an existing essential service or the acquisition of totally new or unique services.	<ul style="list-style-type: none"> <li>• What is the nature of the service?</li> <li>• What type of service is needed?</li> <li>• How necessary is the service?</li> <li>• When is the service needed?</li> <li>• Is this an ongoing or one-time service?</li> <li>• Is this an existing service, a service obtained before, or a new service?</li> <li>• Is this service routine or extraordinary?</li> </ul>	<ul style="list-style-type: none"> <li>• What internal procedures apply to requesting services?</li> <li>• What are the possible or probable sources for the services?</li> <li>• What justifications need to be developed?</li> <li>• Who has the authority to approve the request?</li> </ul>
2. Services are required to be performed by civil service employees whenever feasible. Such feasibility must be considered before seeking a contract. See GC§19130.	<ul style="list-style-type: none"> <li>• Can this service be done in-house?</li> <li>• Is the service available within the agency?</li> <li>• Can another agency perform the service?</li> <li>• Is this routine or extraordinary?</li> </ul>	<ul style="list-style-type: none"> <li>• Is a contract with a non-state provider really necessary?</li> </ul>



	IMPORTANT FACTORS	DECISIONS TO BE MADE
3. Costs and the availability of funds are always a factor. Alternatives range from using already-budgeted funds for simple services to seeking an appropriation.	<ul style="list-style-type: none"> <li>What are the estimated costs of alternatives, including in-house or interagency services?</li> <li>If in-house or interagency services are available, would contracting produce a cost savings?</li> <li>What funds are available to pay for the services?</li> </ul>	<ul style="list-style-type: none"> <li>Which is the best alternative? If in-house service, the contracting process stops. If interagency service is best, the process continues. If a contract is justified, the process continues.</li> <li>Who has authority to approve funding?</li> </ul>
<b>The Following Considerations Assume a Contract is Justified and Funds are Available</b>		
4. The contractor selection method depends on the services involved and/or the circumstances. Different methods impose different requirements and procedures.	<ul style="list-style-type: none"> <li>What is the nature of the service?</li> <li>When is the service needed?</li> <li>Is this an emergency?</li> <li>What is the estimated cost?</li> <li>Are the sources for the service limited?</li> <li>Is a contracted source already available?</li> <li>Can an existing contract be amended?</li> </ul>	<ul style="list-style-type: none"> <li>Select by formal competition, such as: <ul style="list-style-type: none"> <li>Invitation for Bids (IFB)?</li> <li>Request for Proposals (RFP)?</li> <li>Request for Qualifications?</li> </ul> </li> <li>Select by informal competition, such as telephone bids and quotes?</li> <li>Consider only one provider? Use other methods, such as Master Agreements or C-MAS?</li> </ul>
<b>The Following Considerations Assume Formal Competition is Used:</b>		
5. Formal competitive bidding is generally required by law or policy. The formal competitive bidding process involves numerous factors and decisions.	<ul style="list-style-type: none"> <li>The contracting opportunity must be publicized, usually by formal advertising.</li> <li>A solicitation package containing all specifications must be developed and must be available to all competitors.</li> <li>Competition must not be unnecessarily restricted.</li> <li>Procedures must be followed to ensure a fair competition and to guard against leaks or tampering.</li> <li>The competitors' responses must be judged, and a winner must be determined.</li> <li>The results must be announced, and the contract awarded.</li> <li>The contract must be written in accord with the specifications and the contractor's response to the solicitation.</li> </ul>	<ul style="list-style-type: none"> <li>Who develops the technical specifications describing the services to be performed?</li> <li>Who ensures that the technical specifications are necessary, will achieve the desired results, and do not restrict competition?</li> <li>Who develops and reviews the specifications describing general contract requirements and the solicitation requirements?</li> <li>Who conducts solicitation activities, including advertising, dealing with competitors, receiving and safeguarding responses, opening responses, evaluating responses, and notifying competitors?</li> <li>Who writes and processes the contract?</li> </ul>

	IMPORTANT FACTORS	DECISIONS TO BE MADE
6. The contract must be processed for signature, approval and distribution.	<ul style="list-style-type: none"> <li>• The contract must be signed by the contractor.</li> <li>• The contract must be signed certifying availability of funds and indicating the encumbrance of funds.</li> <li>• The contract must be signed by the person authorized to sign for the agency.</li> <li>• Additional approvals must be obtained depending on the contract.</li> <li>• The contract must be distributed.</li> </ul>	<ul style="list-style-type: none"> <li>• Who approves the contract?</li> <li>• Are special approvals required?</li> <li>• Is final approval by the agency authorized or is final approval reserved to DGS?</li> <li>• Who distributes copies of the contract?</li> </ul>
7. Management of the contract must be built into the contract to facilitate measurement of achievement and measurement of contractor performance.	<p>Management includes:</p> <ul style="list-style-type: none"> <li>• Identifying the deliverables and ensuring satisfactory delivery</li> <li>• Monitoring progress, especially for quality and performance deadlines</li> <li>• Providing for audit, especially for critical compliance issues</li> <li>• Reviewing invoices for contract compliance, accuracy, and prompt payment</li> <li>• Tracking state deadlines and use of funds</li> <li>• Identifying contract and contractor problems</li> </ul>	<ul style="list-style-type: none"> <li>• Did the contractor satisfactorily perform all required services?</li> <li>• Should the contractor be paid or should the invoice be disputed?</li> <li>• Is a formal evaluation required or needed?</li> <li>• Should the services be stopped or continued?</li> <li>• Should the contract be renewed or rebid?</li> <li>• How can the contract or contracted services be improved?</li> <li>• Should the encumbered funds be adjusted?</li> </ul>

## 2.05 • ELEMENTS OF A VALID CONTRACT

Each contract must contain the following information:

- Identification of the parties
- Term for the performance or completion of the contract (dates or length of time)
- Consideration (The contract must clearly express the maximum amount to be paid and the basis on which payment is to be made: e.g., a fixed amount of ~~contract~~ regardless of time spent, billing based on time spent at a specified rate plus actual expenses, or cost recovery.)
- Scope (The work, service, or product to be performed, rendered, or provided. Clear and concise language must be used to describe the scope.)
- Other general or unique terms and conditions of the agreement
- Signature by a person for each party who is authorized to bind that party

## **2.06 • AUTHORITY TO SIGN A CONTRACT**

**(Rev 10/97)**

- A. A state agency's authority to contract is limited to those officers who are authorized in writing to do so by the individual agency as designated by the agency head. Agencies must maintain a written record of all persons authorized to sign contracts and transmittals. The signature card LO-33 is no longer required by DGS/OLS.
- B. State boards and commissions either have statutory authority for the executive officer to sign contracts, or the authority of the executive officer to sign contracts is provided by resolution, order, or motion. Contracts in excess of \$5,000 must be accompanied by evidence of the applicable authority to sign the contract. Contracts under \$5,000 are generally deemed to pertain to ministerial duties and do not need to be accompanied by evidence of the applicable authority to sign the contract.
- C. Local public entities authorize and approve execution of contracts through a resolution, order, motion, or ordinance. A copy of such authority must be required by state agencies unless payment will be made after performance is complete. A copy of such authority should be retained in the contract file.
- D. Amendments to a contract that either change the name of the vendor or change the vendor because of a change in business status must be accompanied by official documentation showing the change. This could include the certified filing from the Secretary of State or the sales agreement signed by both parties.

## 2.07 • STANDARD LANGUAGE

(Rev 1/01)

The provisions noted in Table 2.2 are generally required. Agencies should document non-use of clauses.

Table 2.2 - Contract Clauses

<b>Contract Provisions</b>	<b>When Required</b>	<b>Law/Statute</b>
<b><u>Audit by State Auditor</u></b>	All contracts over \$10,000	GC § 8546.7
Audits and access to records	For contracts subject to DVBE goals or good-faith efforts.	PCC § 10115 et seq. 2 CCR § 1896.60 et seq.
Nondiscrimination clause	All contracts	GC § 12990
Antitrust Claims	All competitively bid contracts	GC §4550 et. seq.
Statement of compliance	Contracts \$5,000 or over when not in bid documents	2 CCR § 8113
Americans with Disabilities Act (ADA)	All contracts	42 USC § 12101 et seq.
National Labor Relations Board certification	All contracts	PCC § 10296
Drug-free workplace	All contracts	GC § 8350 et seq.
Progress payments	All contracts where progress payments will be made	PCC §§ 10346, 10379
Recycled paper	All contracts	PCC §§ 10233, 10308.5, 10354
Termination & amendments	All contracts	GC § 11010.5
Priority hiring considerations	Contracts in excess of \$200,000	W&I §§ 11200, 11349 PCC § 10353 2 CCR § 1896.30
Resolution of contract disputes	All service contracts should: consulting services must; Public works contracts may	PCC §§ 10240.5 , 10381, 22200 et seq.
Validity	All contracts requiring DGS approval	PCC §§ 10295, 10335 and 10360- <b>10335</b>
Subject to availability of funds	All contracts signed before approval of budget	State and federal budgets
Year 2000 (Y2K) language	I/T contracts for systems, software, and instrumentation with imbedded chips	State Policy (DOIT & DGS)
Convict/Forced Labor <b><u>/abusive or sweatshop child labor</u></b>	All contracts for purchase of goods or commodities. Some service contracts where supplying goods is a predominate purpose of the contract. Or, where the exact nature of the product is known.	PCC § 6108
<b><u>Promoting/Deterring Union organizing</u></b>	<b><u>Contracts of \$50,000 or more.</u></b>	<b><u>GC §16645 et. seq.</u></b>

Table 2.2 - Contract Clauses (cont.)

<b>Contract Provisions</b>	<b>When Required</b>	<b>Law/Statute</b>
Child Support Compliance	All Contracts exceeding \$100,000 (Interagency Agreements are exempt from this requirement)	PCC § 7110
Non Eligible Alien certification	All Sole Proprietor Contracts	8 USC §1621 et. seq.
Insurance Requirements	All contracts doing hazardous works	State policy
<b><u>Air/Water Pollution Violation Certification</u></b>	<b><u>All contracts over \$10,000</u></b>	<b><u>G.C. 4477</u></b>
<b>Consultant Services (C) – Note: Needed in addition to “Contract Provisions” listed above.</b>		
Amendment	Consultant contracts	PCC § 40366- <b>10335</b>
Evaluation of contractor	Consultant services.	PCC § 10367
Evaluation criteria	Consulting services of \$1,000 or more	PCC § 10371
Progress schedule	Consulting services of \$1,000 or more	PCC §§ 10371 and 40379
Consultant Resumés	Consulting services of \$5,000 or more	PCC § 10371
Detailed cost analysis	Consulting services of \$1,000 or more	PCC § 10371
Project coordinator	Consultant services	
Progress reports/meetings	Consultant services	PCC § 10371
<b>Legal Services (L) - Note: Needed in addition to “Contract Provisions” listed above.</b>		
Legal cost and billing guidelines	Contracts for legal services	PCC § 10353.5
Legal litigation plans	Contracts for legal services	PCC § 10353.5
Case phasing of activities	Contracts for legal services	PCC § 10353.5
Legal budgets	Contracts for legal services	PCC § 10353.5
Legal malpractice	Contracts for legal services	PCC § 10353.5
Legal bill & law firm audits	Contracts for legal services	PCC § 10353.5
<b>Subvention Contracts (S) – Note: Needed in addition to “Contract Provisions” listed above.</b>		
State purchase of equipment	Subvention aid or local assistance	State policy
Prior authorization for reimbursement over \$2,500	Subvention aid or local assistance	State policy
Prior state approval for training seminars, etc., and material	Subvention aid or local assistance	State policy

Table 2.2 - Contract Clauses (cont.)

<b>Federal Contracts (F) – Note: Needed in addition to “Contract Provisions” listed above.</b>		
Cancellation 30 days	Contracts funded in whole or in part by federal government, state government, and other public entities	State policy or federal policy
Fund availability	Contracts funded in whole or in part by federal government, all contracts	Federal policy
Disclosure requirements (Federal Reg)	All contracts	GC § 7550
Disbarment (Federal Regulations)	All contracts	GC § 4477
<b>Contract Provisions</b>	<b>When Required</b>	<b>Law/Statute</b>
Disadvantaged business enterprise_/small business affirmative steps	Contracts funded by federal funds	Federal policy
Federal disclosure statement	Contracts funded by federal funds	Federal policy
<b>Other Contracts (O) – Note: Needed in addition to “Contract Provisions” listed above.</b>		
Bargaining agreements, prevailing wages, standard conditions of employment	Moving services over \$2,500; public works	SAM § 38001.1 GC §§ 14920, 3811
State’s responsibilities for repairs, liability	Contracts for equipment rental	State policy
Equipment maintenance	Contracts for equipment rental	State policy
<b>Interagency Agreements*</b>		
<b>*Interagency agreements do not require other standard contract provisions</b>		
How charges are computed	All interagency contracts	SAM §§ 8752 and 8752.1
Audit	All interagency contracts over \$10,000	GC § 8546.7
Advancing of funds	Any interagency contract	GC § 11257

## CHAPTER 2 - APPENDIX

### AN OLS REVIEW CHECKLIST

(Rev 1/01)

#### A. THE CONTRACT COMPLIES WITH THE LAW.

1. Authority to contract out
  - a. Specific statute
  - b. GC § 19130 consideration
    - Cost savings **(19130(a))** -- State Personnel Board (SPB) approval required
    - Other reasons **(19130(b))**
      - (1) Exempt under Constitution
      - (2) New state function and legislative authority
      - (3) Service not available: highly specialized or technical
      - (4) Incidental to the purchase or lease
      - (5) Conflict of interest; need unbiased findings
      - (6) Emergency appointment
      - (7) Private counsel, with attorney general (AG) approval **and Governors Office, if applicable.**
      - (8) Contractor will provide things that are not feasible for the state to provide
      - (9) Training when civil service is not available
      - (10) Urgent, temporary, or occasional services when civil service delay would frustrate the purpose
2. Budget authority
3. Legal method of procurement
  - a. Bidding not required
  - b. Bidding generally required
    - IFB
    - RFP
    - Sole source
4. Legal requirements met for type of contract
5. Authority to amend

#### B. THE CONTRACT MAKES GOOD BUSINESS SENSE AND THE COST IS REASONABLE.

1. Good business sense
  - a. Drafted to obtain desired results
  - b. Scope of work specific and realistic
  - c. Maximum use of dollars
  - d. Deliverables clear and concise
  - e. Realistic timetable
2. Reasonable cost

- a. Consider whether:
    - Bid is within estimate.
    - Bids cover a wide range.
    - Low bid is very low.
    - All bids are high.
  - b. Has rebidding been evaluated if bids are out of line?
- C. THE CONTRACT USES CLEAR AND CONCISE LANGUAGE CONSISTENT WITH THE TERMS OF SOLICITATION AND BID.
  1. Term
    - a. Within fiscal year appropriation, and
    - b. If for multiple years, contingency language as appropriate
  2. Scope of work
    - a. Specifications, requirements
    - b. Personnel, staffing
    - c. Coordination
    - d. Results, deliverables
    - e. Timelines, progress reports
    - f. Evaluation, acceptance
  3. Total amount and payment method
  4. Terms and conditions—standard and special
- D. SECONDARY ISSUES AND SUPPORTING DOCUMENTATION ARE REVIEWED.
  1. Social issues (as appropriate)
    - a. Small business
    - b. DVBE
    - c. TACPA
    - d. EZA
    - e. LAMBRA
  2. Drug-free workplace
  3. Statement of compliance
  4. Check of corporate standing
  5. Other approvals
    - a. **AG/Gov Office (if applicable)**
    - b. SPB
    - c. Fleet
    - d. Insurance
    - e. Records Management
  6. Std. 204 noted
  7. Resolution
  8. Bonds
  - ~~9. I.D. number~~
  9. Ads, STD 821, or exemption noted
  10. Negative evaluations



### 3. ADDITIONAL REQUIREMENTS FOR SPECIFIC TYPES OF CONTRACTS

#### 3.00 • INTRODUCTION

This chapter covers specific requirements for various types of contracts. See Chapter 2 for the elements of a basic contract, Chapter 10 for public works contracts, and Chapter 11 for architectural and engineering contracts.

#### 3.01 • TABLE OF CONTENTS

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### 3.02 • CONSULTANT SERVICES CONTRACTS (PCC §§ 10335.5 ~~10355-10382~~) (Rev 1/01)

- A. A consultant services contract is a services contract of an advisory nature that provides a recommended course of action or personal expertise. (PCC § ~~10356-10335.5~~)
1. The contract calls for a product of the mind rather than the rendition of mechanical or physical skills.
  2. The product may include anything from answers to specific questions to the design of a system or plan.
  3. Consulting services may include workshops, seminars, retreats, and conferences for which paid expertise is retained by contract, grant, or other payment for services.
- B. Consultant services contracts do not include:
1. Contracts between state agencies and the federal government
  2. Contracts with local agencies, as defined in Revenue and Taxation Code § 2211, to subvene federal funds for which no matching state funds are required
  3. Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations
  4. Contracts for architectural and engineering services (GC § 4525)
  5. Contracts that are expressly exempted from the provisions of PCC § 10295
- C. Agencies shall only use private consultants when the quality of work is at least equal to that of agency resources. (PCC § 10371)**

Note: Certain consultant services contracts are exempt from the statutory competitive bidding requirements. These services include contracts for expert witnesses for litigation as well as contracts for legal services. (PCC § <del>10356-10335.5</del> )
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#### 3.02.1 CONTRACT REQUIREMENTS

- A. Consultant services contracts have certain requirements that do not apply to other contracts. For competitively bid contracts, these special conditions are usually included in the RFP or IFB (PCC § 10371):
1. Consultant services contracts of \$1,000 or more shall contain detailed performance criteria and a schedule for performance.
  2. The contractor must provide a detailed analysis of the costs of performance of the contract.
  3. Consultant services contracts of \$5,000 or more shall have attached as part of the contract a completed resume for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor.
- B. To ensure that all the legal requirements are met, the DGS recommends that a consultant **contract contain:**
1. A clear description of the work to be done or the problem to be solved. (If a problem cannot be clearly delineated, the agency must consider whether the problem is sufficiently understood or is not deserving of a consultant's attention.) The contract must specifically identify in realistic terms what the consultant is to accomplish, including any desired approach to the problem; practical, policy, technological, and legal limitations; specific questions to be answered; the manner in which the work is

- to be done; a description of the items to be delivered: the format and number of copies to be made of the completed reports; and the extent and nature of the assistance and cooperation that will be available to the consultant from the state.
2. Time schedules, including dates for commencement of performance and submission of progress reports, if any, and date of completion.
  3. Manner of progress payments, whether and to what extent they will be allowed, and, if appropriate, known or estimated budgetary limitations on the contract price.
  4. The dispute resolution clause should outline the steps to be taken by each party in the event a dispute arises. **(PCC § 10381)**
  5. Final meeting requirements between the contractor and agency management, when the contractor is to present his or her findings, conclusions, and recommendations, when applicable.
  6. Final report requirements that require the consultant to submit a comprehensive final report, when applicable.

### 3.02.2 REVIEW OF TECHNICAL QUALIFICATIONS

DGS recommends that the following criteria be covered in the evaluation of technical qualifications presented in response to an RFP or IFB:

- A. Does the proposing firm understand the agency's problem? Oral presentations may be arranged, if necessary.
- B. Is the approach to the problem reasonable and feasible?
- C. Does the firm have the organization, resources, and experience to perform the assignment? Has the firm had experience in similar problem areas?
- D. What are the professional qualifications of the personnel whom the firm will commit to the assignment?

### 3.02.3. REVIEW OF PRIOR PERFORMANCE EVALUATIONS

- A. Before awarding a consulting services contract, of \$5,000 or more, an agency must request a copy of any negative evaluations from DGS/OLS. (PCC § 10371.)
- B. DGS/OLS shall send a copy of any evaluation report and response to the contracting manager or contracting officer, or highest ranking contracting official of a state agency on receipt of a written, telephonic, or other form of request stating the reason for the request. On receipt of a consultant services contract submitted for DGS approval, the DGS/OLS shall notify the awarding agency within ten working days if a negative evaluation is on file for the contractor (PCC § 10370). To avoid possible delays in approvals of contracts submitted to DGS, the awarding agency should document the review of the negative evaluations in the space provided on form STD 15 or STD 215.

### 3.02.4. MULTIPLE CONTRACTS WITH THE SAME CONSULTANT

Any agency entering into more than one consultant services contract with the same contractor within a 12-month period for an aggregate amount of \$12,500 or more must have each contract that exceeds the \$12,500 aggregate amount approved by DGS (PCC§ 10371).

### 3.02.5 CONTRACTOR EVALUATIONS (PCC § 10367 and 10369)

Each contractor shall be advised in writing on the standard contract that the performance will be evaluated. This requirement applies to all consulting services contracts of \$5,000 or more.

- A. One Contract/Contractor Evaluation, form STD 4, must be prepared within 60 days of the completion of the contract.
- B. The agency shall document the performance of the contractor in doing the work or in delivering the services for which the contract was awarded.
- C. The evaluations shall remain on file by the agency for a period of 36 months. If the contractor did not satisfactorily perform the work or service specified in the contract, the agency conducting the evaluation shall place one copy of the evaluation form in a separate agency contract file and send one copy of the form to the DGS/OLS within five working days of the completion of the evaluation. (SCM 3.02.5.E. and 7.05.a.9.)
- D. On filing an unsatisfactory evaluation with DGS/OLS, the state agency shall notify and send a copy of the evaluation to the contractor within 15 days. The contractor shall have 30 days to prepare a statement defending his or her performance under the contract and to send it to the agency and the department. The contractor's statement shall be filed with the evaluation in the agency's separate contract file and in DGS/OLS's files.
- E. The evaluations and contractor responses on file with the agencies and DGS/OLS are not public records; they should be maintained in a separate file.

#### 3.02.6 PARTICIPATION OF AGENCY PERSONNEL

- A. Agencies receive the greatest benefits from consultants when the project is a joint undertaking and agency personnel are active participants. Their participation provides the employees with training opportunities and knowledge of what the consultant has done, why it was done, and how the agency can benefit by it. The work often represents knowledge that could never be derived simply through the analysis of the consultant's formal report. Agency personnel working with the consultant can give the project continuity at the operating level in subsequent months. Teamwork between the consultant and agency employees can also foster support for the project and enhance its chances for success.
- B. Each contract should identify a person (or position) in the agency who will be the project coordinator. This person will have the overall responsibility to evaluate and follow up on the work of the consultant. Other staff time should be allotted for the project according to the nature and complexity of each engagement.
- C. The contract shall provide a progress schedule, such as a series of progress reports or meetings on a regular basis to allow the agency to determine whether the consultant is on the right track, and whether the project is on schedule, to provide communication of interim findings, and to afford opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly (PCC § ~~40374~~**10381** [c]).

#### 3.02.7 FEASIBILITY STUDIES FOR EDP ACQUISITIONS

Solicitation documents and contracts with consultants for the preparation of feasibility studies and for recommendations for the acquisition of electronic data processing (EDP) products and services must comply with SAM § 5202.

#### 3.02.8 PROHIBITED BIDS/CONTRACT PARTICIPATION (PCC §10365.5)

- A. A person, firm, or subsidiary awarded a consulting services contract shall not submit a bid or be awarded a contract for the services or goods suggested in that consulting services contract except:
  - 1. A person, firm, or subsidiary may be awarded a subcontract of no more than 10 percent of the total monetary value of the consulting services contract.
  - 2. Contracts for consulting architect or engineer services pursuant to GC § 4525 et seq., or for electronic data processing or telecommunications goods or services pursuant to PCC § 12100 et seq. are exempt (PCC § 10430).

### 3.03 • INTERAGENCY AGREEMENTS

(Rev 11/99)

- A. An interagency agreement (I/A) is a contract between two or more state agencies. (GC § 11256)
1. A contract with a California State University campus is always an I/A.
  2. A contract with a University of California campus (UC) may be either an I/A or a standard agreement, but the contract must follow the requirements for whichever type of contract is used. For example, if the UC agrees to calculate cost based upon the provisions in SAM §8752, then it is an I/A. Otherwise, it will be considered a standard agreement.
  3. I/As may not be used for contracts with campus foundations, the federal government, local entities, or other states.
- B. Special provisions apply:
1. I/As are exempt from advertising in the CSCR.
  2. I/As are exempt from competitive bidding.

Note: If the entity performing the service is using subcontracts or purchasing goods, those services and goods should be competitively bid. (Depending on the nature of the goods or services, agencies may be required to get a sole source exemption if subcontracts are not bid.)

3. I/As are not required to meet DVBE participation goals if the entity performing the services is using its own personnel.
  4. I/As may provide for advancing of funds (GC §§ 11257 through 11263 and SAM § 8758.1)
  5. I/A's do not require the Child Support Certification.
- C. Requirements are as follows:

1. An Interagency Agreement STD 13 or STD 213 must be used.

Note: An interagency agreement with invoice STD 13A is used only for the renting of equipment and supportive services (SAM § 3522.1; GC § 11256).

2. I/As shall include a provision that the charges have been or will be computed in accordance with state requirements as noted in SAM §§ 8752, and 8752.1 unless there is a legal reason for not doing so. Such a reason might be the transfer of federal funds. The reason should be noted.
3. I/As involving the expenditure of public funds in excess of \$10,000 shall contain a provision that the agreement is subject to the examination and audit of the State Auditor for a period of three years after final payment under the agreement (GC § 8546.7).
4. DGS approval is required for I/As of \$50,000 and over unless the agency has a higher delegated authority. Once cumulative amendments to the I/A equal or exceed \$50,000 or the agency's delegated authority, the I/A must be submitted to DGS/OLS for approval (GC § 11256).

### 3.04 • MASTER AGREEMENTS FOR SERVICES AND CONSULTING SERVICES

There are two types of generally acceptable master agreements: statewide and intra-agency.

- A. Statewide master agreements are contracts bid by DGS for services and consulting services that are used by many departments.
1. Master Agreements take advantage of the state's large buying power. Prices are often less than those a single agency could obtain on its own. Any state agency can use the statewide Master Agreements through the use of a subscription agreement, typically using a Standard Agreement Form.
  2. Master Agreements take care of the bidding process and other administrative details. Depending on the particular agreement, Civil Service justification (GC § 19130), and DVBE goals may or may not have been dealt with.
  3. Master Agreements allow an agency to obtain needed services quickly and easily, avoiding the delay and uncertainty of the bid process. Some Master Agreements, especially those with multiple vendors, have User Guides that explain how the contracts are to be used. User Guides for different agreements have varying requirements. It is the responsibility of the using agency to follow the requirements in the User Guide for that particular Master Agreement.
  4. Some subscription contracts to Master Agreements developed by the Department of Personnel Administration and the Procurement Division, DGS, cannot exceed \$100,000. Before developing a subscription contract, check with the Master Agreement Contract Manager.

Note: In rare instances DGS has given authority to another agency to bid and supervise a Master Agreement.

- B. Intra-agency master agreements are contracts let by an agency for the use of the divisions of that agency. Intra-agency master agreements may differ from agency to agency, depending on program needs and statutory authority. Any agency wishing to enter into such a master agreement should discuss the agreement with its DGS/OLS attorney.

### 3.05 • CONTRACTS WITH LOCAL GOVERNMENT (Rev 1/01)

When one of the contracting parties is a county, city, district, or other local public body, the contract shall be accompanied by a copy of the resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into the proposed contract, authorizing execution of the agreement. When performance by the local government entity will be completed before any payment by the agency, such as a room rental or a one-time event, a resolution is not needed. **(See also SCM 3.06)**

### 3.06• AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES AND THEIR AUXILIARIES

(Rev 1/01) (Entire Section Replaced)

- A. **Government entities/auxiliaries exempt from competitive bidding:** Agreements for services and consultant services do not require competitive bids or proposals if the contract is with:
1. Another state entity, including:
    - a. A governmental agency from any state (PCC § 10340)
    - b. A state college or state university from any state.
  2. A local governmental entity or agency, including those created as a Joint Powers Authority (JPA)
  3. An auxiliary organization of the CSU, or a California community college
  4. The Federal Government
  5. A foundation organized to support the Board of Governors of the California Community Colleges, or
  6. An auxiliary organization of the Student Aid Commission established under Education Code §69522.
- B. **Administrative overhead fees:** Agencies shall assure that when services are subcontracted by entities in Section A that all administrative fees are reasonable considering the services being provided and the oversight required. Agencies may only pay overhead charges on the first \$25,000 for each subcontract.
- C. **No subcontracting to circumvent competitive bidding:** Services to be provided by entities listed in Section A, above are to be performed primarily with the staff of the public entity or, in the case of the educational institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular educational institution. Agreements with entities listed in Section A are not to be used by state agencies to circumvent the state's competitive bidding requirements. (PCC § 10340)
- D. **Subcontracting without limitation:** Services may be subcontracted without restriction only when:
1. The primary agreement is a subvention agreement, or
  2. The total of all subcontracts does not exceed \$50,000 or 25% of the total contract, whichever is less, and that subcontracting is not done for the purpose of circumventing competitive bidding requirements.
- E. **Subcontracting subject to limitations:** If the total of all subcontracts exceeds \$50,000 or 25% of the total contract, whichever is less, then subcontracting shall be permissible only if:
1. All subcontracts are with entities listed in Section A, or with other academic institutions of higher education, or consortia of academic institutions of higher education, or the services to be provided under the subcontract are otherwise exempt from competitive bidding, or
  2. If all subcontracts are not with entities listed in Section A, then all subcontracts not awarded to entities listed in Section A, or all subcontracts not exempt from competitive bidding shall require the following:
    - a. Prior written approval from DGS/OLS, or,
    - b. Certification that the subcontractor has been selected by the prime contractor pursuant to a bidding process requiring at least three bids from responsible bidders, or,

- c. Approval by the agency secretary or highest executive officer, attesting that the selection of the particular subcontractor(s) without competitive bidding was necessary to promote the agency/department program needs and was not done for the purpose of circumventing competitive bidding requirements. (PCC 10410)

- F. **Fiscal Intermediaries:** State agencies must follow the guidelines provided in SAM 8002.1 whenever planning the use of other entities to receive money or make disbursements on behalf of the State.

### 3.07 • LEGAL SERVICES CONTRACTS

(Rev 11/99)

- A. Legal services contracts are not subject to competitive bidding or advertising. They must be authorized by the Attorney General. In general, the law requires agencies to use the Attorney General as their legal counsel; however, with written consent by the Attorney General, agencies may contract for legal services. This consent must be obtained before seeking DGS/OLS approval (GC § 11040 et seq.).
- B. Consent to amend the contract must also be obtained from the Attorney General before seeking DGS/OLS approval of any amendment
- C. Legal services contracts must contain the following provisions. The contractor shall:
  - 1. Agree to adhere to legal cost and billing guidelines designated by the agency
  - 2. Adhere to litigation plans designated by the agency
  - 3. Adhere to case phasing of activities designated by the agency
  - 4. Submit and adhere to legal budgets as designated by the agency
  - 5. Maintain legal malpractice insurance in an amount not less than the amount designated by the agency
  - 6. Submit to legal bill audits and law firm audits if so requested by the agency. The audits may be conducted by employees or designees of the agency or by any legal cost-control provider retained by the agency for that purpose

Note: The contractor may be required to submit to a legal cost and utilization review as determined by the agency (PCC §10353.5).
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### 3.08 • EXPERT WITNESS CONTRACTS

(Rev 1/01)

- A. When a consultant is retained as an expert witness in pending litigation, the rate paid should be consistent with the complexity and difficulty of the testimony to be given, the going rate for similarly qualified consultants, and the qualifications and reputation of the particular consultant. The contract should detail exactly what the consultant is to do, i.e., provide reports, submit to depositions, testify in court, or make other appearances.
- B. Contracts solely for the purpose of obtaining expert witnesses for litigation are exempt from advertising and bidding requirements (PCC §~~10356~~10335.5).

### 3.09 • AMENDMENTS

(Rev 1/01)

- A. An amendment is a formal modification to a contract.
  - 1. It should contain the same degree of specificity for changes that the original contract contained for the same item.



- a. **The items of work covered by the amendment should be clearly written as part of the contract. Example: “Scope of work Exhibit X is hereby amended to include additional items of work as shown on Exhibit X1”**
  - b. **Paragraphs being amended should be clearly identified. Example: “Paragraph X is hereby amended to read: The total amount of this contract is . . .”**
2. Amendments must be entered into before the expiration of the original contract.

Note: Do not use such wording as “This contract is effective from (amendment date) to ending date.” Such terminology has the legal effect of moving the starting date of the entire contract up to the amendment date. **The effective date of the amendment can be specified without affecting the contract period. Example: “The effective date of this amendment is . . .”**

3. If the original contract was subject to DGS/OLS approval, the amendment is also subject to DGS/OLS approval unless it only extends the original time of the contract for a period of one year or less. A consulting services contract may be amended only once under this exemption (PCC § ~~10366~~ **10335**). See SCM 4.
4. If the original contract was not subject to DGS/OLS approval, but the amendment makes the contract as amended subject to DGS/OLS approval, the amendment must be approved by DGS/OLS. Submit a copy of the original contract and any other amendments to DGS/OLS when seeking approval of the amendment (SCM 4).
5. Contracts awarded on the basis of a law requiring competitive bidding may be modified or amended only if the contract so provides or if so authorized by the law requiring competitive bidding (PCC § ~~10366~~ **10335** and GC § 11010.5).

Note: In some instances contracts not providing for amendments may still be amended if a sole-source exemption is obtained.

6. If the amendment has the effect of making the contract subject to any other contract requirements, those requirements must be complied with, including requirements related to lease/purchase analysis, the state’s indemnification or holding harmless the contractor, addition of hazardous work, or a change in the rate of compensation from the rate bid.
7. If the amendment when added to the original contract and any other amendments exceeds your agency’s delegated approval authority, the amendment must be submitted to DGS/OLS for approval.
8. An amendment may not be used to circumvent the competitive bidding process. Sole-source approval must be obtained when the amendment:
  - a. Increases the dollar amount by more than 30 percent, or
  - b. Significantly changes or significantly increases the scope of work, or
  - c. Increases both the time and dollar amount.

Note: A sole source approval is not required, if the bid document included possible additional years, and the rates, terms and conditions remain unchanged.

9. When an amendment or modification is subject to DGS/OLS approval, a STD 15 or STD 215 should be completed, explaining the reason for the ~~extension~~ **amendment**, and transmit it to DGS/OLS, in accord with the procedure detailed in SCM 4.
10. When an amendment changes or corrects contract terms by “striking” out contract terms, both parties signing the agreement must initial the “strikeout”.
11. When an amendment changes the contract amount, the amount changed by the amendment must be stated, along with the new total contract amount. Example: “This amendment adds \$1000 to the contract. The total amount of the contract will not exceed \$(new contract total).”

### 3.10 • EMERGENCY CONTRACTS

Emergency is defined in PCC §1102 as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

#### 3.10.1. EMERGENCY CONTRACT PROCESSING PROCEDURES

(Rev 1/01)

- A. Agencies are not required to obtain three bids or advertise before entering into a contract in the event of an emergency.
- B. Sole Source approval is not required to enter into a contract in the event of an emergency.**
- BC.** Ordinarily, consulting services contracts should not be commenced before formal approval by DGS/OLS if dollar amounts require DGS/OLS approval. However, in emergency circumstances an award may be made with the approval of the agency head without DGS/OLS approval. Thereafter, the contract should be sent to DGS/OLS for approval. Other required approvals may be deferred in the same manner.

Note: For consultant services contracts, an emergency means an occurrence, as determined by DGS, in which the use of contracted services appeared to be reasonably necessary, but there was insufficient time to obtain prior formal approval of the contract (PCC § 10371).

### 3.11 • FEDERALLY FUNDED CONTRACTS

- A. All contracts, except for state construction projects, that are funded in whole or in part by the federal government must contain a 30-day cancellation clause and the following provisions:
  1. It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
  2. This contract is valid and enforceable only if sufficient funds are made available to the state by the United State Government for the fiscal year \_\_\_\_ for the purpose of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.

3. The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
  4. The department has the option to void the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction ~~for~~ in funds.
- B. Exemptions to provisions A.1 through A.4 above may be granted by the Department of Finance provided that the director of the state agency can certify in writing that federal funds are available for the term of the contract.

### 3.12 HAZARDOUS ACTIVITIES CONTRACTS

These contracts require review by DGS/OLS or ORIM.

- A. Hazardous activities are activities performed by the contractor that may result in substantial risk of serious injury to persons or damage to property; such activities include but are not limited to the following types of work or service:
1. Major repairs or alterations, or new construction of buildings. Contracts in excess of \$50,000 are defined as major. Contracts for lesser amounts may be determined to be hazardous depending on the risk of damage or injury.
  2. Excavation, drilling, or demolition.
  3. Pest control, fumigation, crop or agricultural spraying, or application of chemicals of any type.
  4. Elevator maintenance.
  5. Transporting of persons by any mode of transportation. Automobile liability insurance is required in addition to public liability insurance.
  6. Use of any aircraft (fixed wing or rotor) or watercraft. Aircraft liability insurance is required in addition to public liability insurance.
  7. Automobile or motorcycle racing, rodeos, thrill shows, fireworks exhibitions, or carnivals.
  8. Treatment, removal, storage, or any other handling of hazardous substances including but not limited to toxic waste, petroleum waste, asbestos, and like substances.
- B. Regardless of the contract amount, insurance is required if hazardous activities are included in the performance of a contract.
1. Contracts for hazardous activities costing \$100 or more must be submitted to DGS/ORIM for review to ensure that the contract and the certificate of insurance comply with the provisions of this section and that the insurance coverage meets applicable standards.
  2. For those contracts under \$100, the appropriate certificate of insurance must be obtained and filed with the contract for possible audit by DGS.
- C. If the contract and accompanying insurance certificate are deemed appropriate, ORIM will certify the contract as meeting insurance requirements. If the contract requires approval by OLS, ORIM will forward the contract to OLS for review and approval. If OLS approval is not required, the certified copy of the contract will be returned to the agency.
- D. Contracts for hazardous activities shall contain the insurance provisions noted in SCM 7.40.

### **3.13 • JOINT POWERS AGREEMENTS**

(Rev 11/99)

These are agreements entered into by two or more public agencies for the purpose of jointly exercising any power common to the contracting parties. Such agreements may result in the creation of a separate agency or entity with which the state may contract and are exempt from bidding requirements. A board resolution authorizing execution of the agreement with the state is required unless services will be completed prior to payment from the state. See GC § 6502

Note: Contracts awarded to JPAs must still meet all contract requirements including verification that the rates received from a JPA are reasonable.

### **3.14 • MEMORANDUM OF UNDERSTANDING (MOU)**

A form of contract.

### **3.15 • CONTRACTS WITH NONPROFIT ORGANIZATIONS**

Contracts may be made between the state and a private entity that is a nonprofit corporation. Bidding requirements would apply unless exempt by statute or the contract is for subvention or local assistance. See SCM 3; IRS Code § 501C.

### **3.16 • REVENUE AGREEMENTS**

Revenue agreements generally include: Revenue, Reimbursable, Income Contracts Receivable and Cost Recovery Contracts

- A. Contracts between the state and a private entity in which the private entity pays the state for services rendered. A contract should be awarded by competitive bidding procedures if it is a profit-making venture for the contractor.
- B. Contracts between the state and a local entity.

Note: These contracts are submitted to DGS/OLS under the same provision as other contracts, depending on the value of the contract.

### **3.17 • SUBVENTION AND LOCAL ASSISTANCE CONTRACTS**

(Rev 10/97)

- A. Agreements that are financed from the local assistance portion of the budget, including those agreements providing assistance to local governments and aid to the public directly or through an intermediary, such as a nonprofit corporation organized for that purpose. The agency's budget would have to allow for this assistance.
- B. Because subvention aid or local assistance contracts are generally not awarded to a low bidder through competitive bidding, these contracts should contain adequate control language and should address the necessity and reasonableness of the cost in the contract submittal.
- C. If the contract is a profit-making venture for the contractor, it should be awarded by competitive bidding procedures.

#### **3.17.1 SUBVENTION AID OR LOCAL ASSISTANCE CONTRACT TRANSMITTAL**

- A. The Contract Transmittal form, STD 15 or STD 215, for negotiated subvention aid cost-reimbursement types of contracts must:
  - 1. Advise whether the contracting agency, with the advice of the State Personnel Board, has determined that the reimbursable salaries do not exceed salaries payable to state personnel for similar classifications; and

2. Identify the classifications and rates involved if the reimbursable salaries exceed state rates, and state the reason for such higher rates, and how the agency's interests are served by the contract.
- B. The transmittal should detail:
1. The factual basis for the contracting agency's determination that the other reimbursable costs and any fixed unit rates are reasonable in amount;
  2. The basis for selection of the particular contractor; and;
  3. The contracting agency's compliance with any special statutory requirements applicable to the particular program.
- 3.17.2 SUBVENTION AID OR LOCAL ASSISTANCE CONTRACT FISCAL CONTROL PROVISIONS
- A. Payment provisions in subvention aid contracts should be on a cost-reimbursement basis with a ceiling specifying the maximum dollar amount payable by the agency. Contracts must set forth in detail the reimbursable items, unit rates, and extended total amounts for each line item. The following information is provided as a guide:
1. Identify and justify direct costs and overhead costs, including employee fringe benefits.
  2. Monthly, weekly, or hourly rates, as appropriate, and personnel classifications should be specified, together with the percentage of personnel time to be charged to the contract, when salaries and wages are a reimbursable item.
  3. Rental reimbursement items should specify the unit rate, such as the rate per square foot.
  4. If travel is to be reimbursable, the contract must specify that the rates of reimbursement for necessary traveling expenses and per diem shall be set in accordance with the rates of the Department of Personnel Administration for comparable classes and that no travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the agency.
- B. Subvention aid contracts must specifically reserve title to the agency for state-purchased or state-financed property which is not fully consumed in the performance of the contract, even when the property is purchased in whole or in part by federally supplied funds (absent a federal requirement for transfer of title).
1. The contract must include a detailed inventory of any state-furnished property, and the agency must comply with the policies and procedures regarding state-owned property accounting set forth in SAM §8640, et seq. Provisions must be included regarding the usage, care, maintenance, protection, and return to the agency of the property.
  2. If purchase of equipment is a reimbursable item, the equipment to be purchased should be specified. Automotive equipment should be purchased by DGS/Procurement Division. The contracting state agency should arrange for purchase of all other major equipment items by DGS/Procurement Division, as well as other items when economies can be achieved by so doing, with the cost to be deducted from the amount payable to the contractor.
- C. Payments are not permitted for construction, renovation, alteration, improvement, or repair of privately-owned property when such work would enhance the value of the property to the benefit of the owner.

- D. The contract should require prior authorization in writing by the agency before the contractor will be reimbursed for any purchase order or subcontract exceeding \$2,500 for any articles, supplies, equipment, or services. The contract should also require the contractor to provide in its request for authorization all particulars necessary for evaluation of the necessity or desirability of incurring such cost and the reasonableness of the price or cost. Three competitive quotations should be submitted or adequate justification provided for the absence of bidding.
- E. The contract should reserve prior agency approval controls over the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop or conference and over any reimbursable publicity or educational materials to be made available for distribution. The contractor should be required to acknowledge the support of the agency when publicizing the work under the contract in any media.
- F. The contract must require the contractor to maintain books, records, documents, and other evidence pertaining to the reimbursable costs and any matching costs and expenses and to hold them available for audit and inspection by the state for three years.

### **3.18 • UC, CSU, COMMUNITY COLLEGES, AND THEIR FOUNDATIONS OR AUXILIARIES (Rev 1/01)**

- A. Agreements with the Regents of the University of California (UC) do not require bidding when the agency directly contracts with the UC to do the work utilizing UC faculty, staff and/or students. Agreements with the UC may be done as an I/A where cost calculations are in accordance with SAM §8752. Where costs are not calculated in accordance with SAM §§8752, or where UC participates in a bid for the contract opportunity, the contract must be done using a Std 2. or STD 213 and meet all language requirements for other Services or Consulting Services Contracts.
- B. Agreements with the Trustees of the California State University (CSU) do not require bidding when the agency directly contracts with CSU to do the work utilizing CSU faculty, staff, and/or students.
- C. Agreements with auxiliary organizations or foundations of the UC, CSU, or the California Community Colleges that aid the mission of the institutions with which they are affiliated do not require bidding when the agency directly contracts with the auxiliary organization or foundation to do the work utilizing the organization's regular staff or students.
- D. When contracting for students, GC § 19133 requires:
  - 1. work must be related to the student's field of study
  - 2. students cannot accrue civil service status
  - ~~23.~~ students cannot be employed for more than 194 days in the 365 days beginning with the day of initial employment
  - 4. use of students cannot cause displacement of civil service employees

<p>Note: These contracts and agreements cannot be used to circumvent the state's competitive bidding requirements. Subcontracting and purchases under these contracts and agreements should be competitively bid in a manner similar to that required by the state. See also SCM 3.06</p>
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### 3.19 • EDP AND TELECOMMUNICATIONS CONTRACTS

(Rev 1/01)

Note: The terms EDP (Electronic Data Processing), and I/T (Information Technology) are synonymous for purposes of this manual.

- A. These are contracts whose primary purpose is to obtain, maintain, or enhance the agency's use of data processing or telecommunications technology. See Section ~~1.45~~ **1.05** on how to determine whether a contract is for an I/T Service or I/T Consulting Service, or a non I/T Service or a non I/T Consultant Service

Note: Installation of cabling alone, is not considered an I/T or EDP service contract. Depending on circumstances installation of cabling may be a service, or a public works contract.

- B. Contracts covering goods and services for electronic data processing (EDP) and telecommunications are to be submitted to the DGS/Procurement Division (SAM §§ 4510 and 5200 et seq.).
- C. There is a separate acquisition authority for EDP and telecommunications goods and services. (See PCC §§. 12100 et seq.)
- D. Additional considerations for EDP and telecommunications transactions are as follows:

	EDP	TELECOMMUNICATIONS
1. May the contract require a departmental certification to be included with supporting documentation?	Yes	No
2. May a copy of the FSR and approval letter be requested?	Yes	No
3. If the original contract was approved by the Procurement Division (PD), are amendments that only extend the time or only increase the dollar value by less than 30 percent exempt from PD review?	No	No
4. Do software systems, and instrumentation with imbedded chips require Year 2000 (Y2K) language?	Yes	Yes

- E. There are two designations for solicitation transactions:
1. Informal: \$500,000 or less
  2. Formal: more than \$500,000

- F. There are three types of solicitation documents that are used.
1. Request for Quotations (RFQ)--generally used for informal procurements.
  2. Invitation for Bids (IFB)--generally used for formal procurements when the award is based on the lowest cost meeting all specifications.
  3. Request for Proposals (RFP)--generally used for formal procurements when the award is based on factors other than cost alone.
- G. There is no requirement for a specific number of bids to be received. However, the following applies to the number of suppliers solicited:

\$15,000 or less	\$15,001 to \$500,000	Over \$500,000
Solicit 3 suppliers	A. Solicit seven suppliers or,  B. Obtain quotes from three suppliers	Generally, the entire State Bidders List pertinent to the category of transaction is solicited. A Request for Interest letter may be used initially for this.

- H. Only large-scale systems integration projects and procurements for services must use value-effective criteria as a part of the selection process, and awards must not be based on cost alone.
- I. Solicitations for which the award is not limited to cost alone must have the cost data separately sealed from the remainder of the proposal.
- J. The small business preference applies to all qualifying small businesses (PCC §12102(d)).
- K. Issuance of notices of Intent to Award and protest processes are different for procurements for information technology.
- L. Delegation authorities for the procurement of information technology (EDP or telecommunications acquisitions) are issued by DGS/Procurement Division and are not the same as the contract exemptions issued under SCM 4.04.



### 3.20 • CONVENTION AND CONFERENCE SERVICES CONTRACTS (Rev 1/01)

Services for conventions and conferences **do not have to be competitively bid. However, they** must generally follow the requirements of other services contracts. Questions and information about contracting requirements for conference facilities, room rental rates, food and beverage functions, and so forth may be directed to:

<u>Name</u>	<u>Department</u>	<u>Telephone/ Email</u>
Johnna Meyer CMP	Department of Aging	(916) 322-0788/ jmeyer@aging.state.ca.us
Pamala Corona	Employment Development	(916) 654-7940/pcorona@edd.ca.gov
Gloria Anderson	General Services	(916) 323-6830/ gloria.anderson@dgs.ca.gov
Society of Government Meeting Professionals, (Sacramento Chapter) (916) 424-7467		

Note: SAM § 1233 has been revised to add the following to the list of contracts exempt from the California State Contracts Register Advertising:

“1233(s). Contracts for conference meeting facilities, including room accommodations for conference attendees.”

This was added due to the unique combination of factors considered in selecting an appropriate conference facility, e.g. location, meeting room size, food service availability, etc. **See also SCM 5.80.**

## 4. DGS CONTRACT APPROVAL

### 4.00 • INTRODUCTION

This chapter presents the policies and procedures related to obtaining contract approval by DGS/OLS. Exemptions from such approval are also covered.

PCC §§10295, 10297, and 10335. ~~and 10360~~ are the primary legal authority for DGS/OLS review and approval of contracts. GC §14615 is the legal authority for the supervision of the state's business policies, and GC §14616 is the legal authority for some exemptions from DGS/OLS approval of contracts.

Individual agencies and programs may have specific statutes affecting their particular contracting programs.

### 4.01 • TABLE OF CONTENTS

(Rev 10/98)

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### 4.02 • RESPONSIBILITY FOR CONTRACT APPROVAL

(Rev 10/97)

- A. Each state agency is responsible for making sure that its contracts comply with applicable legal requirements and are based on sound business practices. DGS/OLS provides the final approval if required by law.
- B. In some instances additional approvals may be needed, such as those from the Attorney General, State Personnel Board, State Fire Marshal, DGS/Office of Risk and Insurance Management, or other DGS offices.
- C. Contract approval by DGS serves to assist state agencies by:
  1. Ensuring effective compliance with applicable laws and policies
  2. Conserving the fiscal interests of the state and preventing improvident acts
  3. Applying contract knowledge and legal expertise prior to final approval.

## D. Remedies and Penalties:

1. PCC § 10420 - Every contract or other transaction entered into in violation of Chapter 2 of the Public Contract Code is void, unless the violation is technical or nonsubstantive.
2. PCC § 10421 - Civil action may be brought in Superior Court to determine a violation of Chapter 2 of the Public Contract Code. If a violation is found the contract shall be void.
3. PCC § 10423 - Any person contracting with the State who corruptly permits the violation of any contract made under Chapter 2 of the Public Contract Code is guilty of a felony and under Section 10424 is also liable to the State for double the amount the State may have lost.
4. PCC § 10425 - Willful violation of any other provision of Chapter of the Public Contract Code shall constitute a misdemeanor.

**4.03 • CONTRACTS REQUIRING DGS/OLS APPROVAL****(Rev 1/01)**

DGS/OLS has statutory authority under several sources to approve contracts. An explanation of the major sources of that authority is presented in Table 4.1.

Table 4.1

Contract Description	Approval Authority	Applicability of Approval Authority (All contracts unless specifically exempted)
All contracts by any state agency	PCC § 10295	§ 10295(a) The hiring or purchase of equipment, supplies, materials, or elementary school textbooks § 10295(b) Services, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor § 10295(c) The construction, alteration, improvement, repair, or maintenance of property, real or personal, or § 10295(d) The performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department.
All contracts whether or not subject to competitive bidding	PCC § 10297	
Services contracts	PCC § 10335	All services except: <ul style="list-style-type: none"> <li>• Public works</li> <li>• A&amp;E contracts</li> <li>• Contracts expressly exempted from § 10295</li> <li>• Contracts of less than <del>\$1,000</del> <b>\$5,000</b></li> <li>• Contracts of less than \$5,000 for per diem or travel only</li> <li>• Personal property maintenance or repair</li> </ul>
Consultant services contracts	PCC § <del>40360</del> <b>10335</b>	Applies to consultant as defined by PCC § <del>40356</del> <b>10335.5</b>
Contracts statutorily exempted	Varies	Prerequisites of exemption statute must be complied with
Interagency agreements	GC § 11256	Contracts with other state agencies

**Some specific types of contracts which would require DGS/OLS review/approval include but are not limited to the following:**

- 1. Contracts that limit the contractor's liabilities or require the state to indemnify or to hold the contractor harmless**
- 2. Contracts that require the state to assume liabilities beyond the state's control**
- 3. Contracts that create a contingent liability for the state**
- 4. Contracts that provide for advance payment for services or rentals**
- 5. Any provision creating a contingent liability against the state (e.g., those vendors' printed rental contracts obligating the user of rented equipment to serious contingent liabilities)**
- 6. Any agreement for moving services, regardless of form used (including, but not limited to, subscription agreements, purchase orders, TRAs, etc.) (GC § 14920)**

#### **4.04 • CONTRACTS NOT REQUIRING DGS/OLS APPROVAL**

(Rev 1/01)

A.

The law requires all contracts to be approved by DGS/OLS unless the contract is exempt from approval (PCC §10295).

**1A.** A contract is exempt from DGS/OLS approval if:

- a1.** It is specifically exempt from approval by statute; or
- b2.** It is exempt from approval because of the monetary value of the contract by PCC § 10351, 10364, or GC § 14616; or
- c3.** It has been exempted from approval by an exemption letter issued by the DGS/OLS; or
- d4.** It is a federally funded grant exempted ~~by~~ **based on** opinion of the attorney general.

**2B.** Delegated approval limits are as follows, except as noted below in No. 4:

- a1.** Less than \$50,000 for interagency agreements
- b2.** \$20,000 or less **than \$35,000** for all other contracts GC § 14616

**Although** these contracts do not require DGS/OLS approval. ~~However,~~ review/approval services are available **on request,** for any contract, regardless of value.

~~B. Not included in the delegated approval (therefore DGS/OLS must approve) are:~~

- ~~1. Contracts that limit the contractor's liabilities or require the state to indemnify or to hold the contractor harmless~~
- ~~2. Contracts that require the state to assume liabilities beyond the state's control~~
- ~~3. Contracts that create a contingent liability for the state~~
- ~~4. Contracts that provide for advance payment for services or rentals~~
- ~~5. Any provision creating a contingent liability against the state (e.g., those vendors' printed rental contracts obligating the user of rented equipment to serious contingent liabilities)~~
- ~~6. Contracts for moving services (GC § 14920)~~

## **4.05 • APPROVAL OF EMERGENCY CONTRACTS**

(Rev 1/01)

Emergency is defined in PCC §1102 as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

The law recognizes exceptions from competitive bidding in emergencies (PCC §§ 1102 and **10340(b)(1)**), but no exception is provided from contract approval. The basic policy is to respond to the emergency as circumstances demand and then to obtain the formal approval(s) as soon as practicable. However, before the start of the work, the contract must be verbally authorized by someone with authority at the agency to initiate a contract in such situations. If there is any question about whether the circumstances qualify as an emergency, DGS/OLS should be contacted as soon as possible. The contract will be processed on an Expedite basis as discussed in SCM 4.08C.

## **4.06 • CERTAIN FEDERALLY FUNDED GRANTS EXEMPT FROM APPROVAL BY DGS**

(Rev 11/99)

The Attorney General (AG) has opined that certain federally funded grants are not subject to approval by DGS/OLS. The AG opinions are based primarily on the nature of a grant compared with a services contract as described in the law. (See 58 Ops.Cal.Atty.Gen 586 [1974] and 63 Ops.Cal.Atty.Gen. 290 [1980].)

The AG opinions present the following factors as relevant to whether a contract qualifies as an exempt grant:

- A. The grant must fall under specific statutory authority. Without specific statutory authority, a grant is an illegal gift of public funds.
- B. The grant must not benefit the state. Even if the award was made subject to an authorized grant program, if the agreement provides a benefit to the state, it is not exempt from approval (unless exempted by specific statute). Common benefits are as follows:
  - 1. Services are provided to the state.
  - 2. The state obtains title to equipment, copyrights, or patents.
  - 3. The state is relieved from a statutory obligation to perform the services (usually services to the public).
- C. Performance under the grant must not be controlled by the state. The grant must fund the grantee's program, not the state's program.

## **4.07 • EXEMPTION LETTERS**

(Rev 10/97)

Exemption letters are issued by DGS. Exemptions beyond the general delegation limits described in SCM 4, are outlined in Table 4.2.

Table 4.2  
**Exemption Letters**

Factors	Authority	General Considerations
All services, consultant services, and interagency agreements	PCC § 10351 (Services <b>and Consultant Services</b> ) PCC § 10364 (Consultant Services) GC § 11256 (Interagency Agreements)	<ul style="list-style-type: none"> <li>• Up to \$75,000</li> <li>• Agency officer responsible for contracting program</li> <li>• Written policies and procedures</li> <li>• Management system</li> <li>• Contract training program</li> <li>• Audit every two years</li> <li>• Reporting procedures</li> </ul>
Specific program or type of contract, usually repetitive in nature	GC § 14616	<ul style="list-style-type: none"> <li>• Limited to \$50,000</li> <li>• Contract format is usually a part of the exemption</li> <li>• Requires certification by the agency</li> </ul>

Application for an exemption letter should be made by written request to the Director of DGS.

#### **4.08 • OBTAINING APPROVAL FROM DGS/OLS** (Rev 1/01)

Note: See Chapter 4 appendix for sample OLS checklist.

##### **A. Required Supporting Documents**

1. Contract Transmittal form, STD 15 or STD 215. This form must contain an explanation sufficient to afford a basis for approval as to:
  - a. The purpose and necessity or desirability of the contract or interagency agreement;
  - b. The reasonableness of the price or cost of the services (not applicable to I/As except those with UC or CSU); and
  - c. Any other pertinent information necessary to understand the proposed transaction.

The form STD 15 or STD 215 shall also contain the name and telephone number of the contact person in case questions arise or additional information is needed by DGS/OLS reviewing attorney. The contact person is the staff member who regularly deals with DGS/OLS on contract matters. A copy of the STD 15 or STD 215 will be retained on file at DGS/OLS.

- d. Within ten working days of an award, an agency must report the award of each contract over \$5,000 to the Department of Fair Employment and Housing (DFEH), including contracts with the University of California. Information required is specified in 2 CCR § 8117.5. (This requirement does not apply to contracts with other California state agencies or with the federal government.) Use STD 16 for reporting purposes. Check the box on the reverse side of STD 15 or STD 215 that this requirement has been complied with.
2. ~~Vendor~~**Payee** Data Record form STD 204. This form must be completed by the vendor (except for state and other governmental entities). The form should accompany the contract to final approval or a note should be made of it on STD 15 or STD 215. The STD 204 must be retained in the agency's accounting or business affairs office.

3. Bidding documents (i.e. IFB/RFP). If the contract was awarded by competitive bid, all bids or proposals received, together with the documents comprising the IFB or RFP and related correspondence, must accompany the contract to final approval. If fewer than three bids or proposals were received, document the awarding agency's efforts to obtain at least three competitive bids.
4. The California State Contracts Register ad. The ad as well as all other ads used to advertise the contract must accompany the contract to final approval. A printout of the electronic version of the CSCR ad or a copy of the confirmation printout is sufficient substantiation of that ad.
5. A Statement of Compliance form, STD 19. This form must accompany bids or proposals submitted by contractors for nonexempt state contracts of \$5,000 or more. See 2 CCR § 8113. State agencies may attach a copy of the STD 19 to their solicitations for bids or proposals. The STD 19 must be fully executed by the bidder and returned to the agency with the bid before the bid deadline.

- a. Agencies may include the following provision in bid forms in lieu of using STD 19 and in nonbid contracts:

Statement of Compliance

The prospective contractor's signature affixed hereon and dated shall constitute a certification, under the penalty of perjury under the laws of the State of California, that the bidder has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 (a - f); and of Title 2, CCR Section 8103.

- b. Agencies may include the following provision in the contract in lieu of using STD 19 in nonbid contracts:

Statement of Compliance

The contractor's signature affixed hereon shall constitute a certification, under the penalty of perjury under the laws of the State of California, that the contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 (a-f); and of Title 2, CCR Section 8103.

Note: An offer by a contractor to enter into a contract on a noncompetitive basis, when permitted, cannot be accepted unless such contractor furnishes a Statement of Compliance as a part of its final offer.

6. Drug-Free Workplace Certification. State contractors and grantees must certify that they will provide a drug-free workplace by signing a Drug-Free Workplace Certification - STD 21.

Note: The Drug-Free Workplace wording can be used in the terms and conditions of a contract that is to be signed by the contractor.

7. DVBE goals or good faith effort documentation. When participation goals are required in the bidding documents, as discussed in SCM 8, documentation supporting the commitment to meet the goals or performance of a good faith effort must accompany the contract.

**B. Number of Copies**

1. When approval by DGS/OLS is required, four completed copies of the contract must be transmitted. At least two of the copies must bear original signatures. Stamped replicas of signatures are not acceptable as original signatures.

Note that no more than four copies will be signed by DGS/OLS.

After approval by DGS/OLS, the copies will be distributed as follows:

- a. One copy will be forwarded to the State Controller's office. This step is not required for contracts submitted by district agricultural associations or for contracts in which payment is not from funds in the state treasury.
- b. One copy will be retained by DGS/OLS.
- c. The remaining two copies with original signatures, will be returned to the submitting agency.

Note: DGS/OLS is currently exploring alternatives in support of electronic contracting endeavors which may require only one original package to be submitted to DGS/OLS.  
**See SCM 5.04**

**C. Contract Approval Review Time**

DGS strives to complete the review and approval process in ten working days or less. Current (96/97) statistics indicate that 99% of all contract reviews meet the goal.

Note: Expedited review is available in exceptional circumstances on request to the DGS/OLS Chief Counsel or an Assistant Chief Counsel.

**4.09 • APPROVAL AND COMMENCEMENT OF WORK**

(Rev 1/01)

**A. Basic Policy**

The basic state policy is that no contractor should start work until receiving a copy of the formally approved contract. The approval by DGS/OLS is the final, formal approval of the contract. The law provides that when DGS/OLS approval is required, contracts for services should not begin before receipt of approval; payment for services may not be made until the contract is approved by the DGS/OLS or, in the case of an exempt contract, until it is formally approved by the agency. See PCC §§10295, and 10335, ~~and 10360.~~

**B. Ratification of Work Done Before Approval of the Contract**

Any work done before formal approval of the contract in accordance with the contract specifications is deemed ratified by the agency at the time of formal approval of the contract. This provision recognizes that on occasion there may be an unavoidable lag time between the practical need for services and the formal approval of a contract. In some cases, this lag time will make it impossible to obtain formal approval before the services are actually needed.

**C. Necessity of Time Management**

Contracting staff are generally aware of the necessity for timely action and effective management of time during the contracting process. It is necessary to minimize the number of cases in which the contractors start work before formal approval of the contract. For contracts submitted to DGS/OLS, if the contract term starts less than two weeks after submission, the contract will be regarded as "late" and an explanation for lateness will be required on the STD 15 or STD 215.



**D. Consultant Contracts**

The law does not permit consultants to start work before formal contract approval, except in an emergency, which is specifically defined in SCM 3.10.

When it is necessary for a consultant to start work before approval of the contract, the circumstances must be noted in the contract file as an emergency in accordance with PCC § 10371(d).

**E. Warning to Contractors**

1. Contracts are not valid unless and until approved by DGS/OLS if such approval is required by law. See PCC §§ 10335. ~~and 10360.~~
2. The contractor should be warned not to start work before receipt of the approved contract. The warning can be provided in the IFB or RFP, at the time of the award, or at the time the contract is sent to the contractor for signature.
3. If the contract is not approved and the contractor has begun work, the contractor may be considered to be a volunteer or the contractor may have to pursue a claim for payment by filing with the Board of Control. The state has no legal obligation unless and until the contract is approved.

Note: Once the contract is approved, authorized services provided by the contractor can be paid from the beginning date of the contract.

**4.10 • APPROVAL OF AMENDMENTS**

(Rev 11/99)

- A. Amendments should be approved by the same level of authority that the original contract was approved unless such authority has been specifically delegated. If the original contract was approved by DGS/OLS, any amendment must be approved by DGS/OLS except for the following:
1. If the amendment only extends the original time for completion or performance for a period of one year or less, the amendment is exempt from approval by DGS/OLS. Note: Even though these amendments are exempt from OLS review and approval, a copy must be sent to OLS for the contract files.
  2. Multiple extensions of time may be exempted so long as the cumulative extension does not exceed one year.
  3. For consultant services contracts, the exemption for extension can be used only one time (PCC § ~~40366~~ **10335**).
  4. Extension of the contract cannot be used to circumvent the termination of availability of funds. (See GC § 16304, 2 CCR § 610, FY Budget Act.) Even though the extensions cited above are exempt from approval, a fully executed copy of the amendment and a form STD 15 or STD 215 explaining the reason for the extension must be sent to DGS/OLS if the original contract was subject to DGS/OLS approval.
- B. To obtain DGS approval of an amendment, the amendment should be submitted to DGS/OLS along with a STD 15 or STD 215. If the original contract and prior amendments were not approved by DGS/OLS but have become subject to approval because of the amendment, a copy of the original contract and prior amendments and supporting documentation must be submitted to DGS/OLS. Sole-source approval authorization must be included when applicable.

- C. The Contract Transmittal Form - STD 15 or STD 215, should concern the changes made to the contract by that amendment and cite:
  - 1. Authority to amend the contract.
  - 2. Reason for amending the contract.
  - 3. Any changes in meeting the DVBE goals.
- D. See SCM 3.09 for other information about amendments.

#### **4.11 • APPROVAL OF WASTE RECYCLING AGREEMENTS**

**(Rev 11/99)**

- A. Agreements for waste recycling programs similar to those of the Integrated Waste Management Board (IWMB) require prior approval of the IWMB (PCC §12165(d))
- B. A memorandum from the Integrated Waste Management Board (IWMB) approving the agreement must be transmitted with the contract when sent to OLS for approval. Contracts not accompanied by an approval memo from the IWMB will be returned to the submitting agency.

**CHAPTER 4 - APPENDIX**  
**DGS LEGAL**  
**CONTRACT CHECKLIST**  
**(Rev 1/01)**

Contract # \_\_\_\_\_

FY \_\_\_\_\_

Department/Program \_\_\_\_\_

Reviewer \_\_\_\_\_

Analyst \_\_\_\_\_

REVIEW DATE \_\_\_\_\_

DATE TO DGS LEGAL \_\_\_\_\_

Note: Highlighted items must be added to this contract and resubmitted to the Reviewer identified above for further review.

\_\_\_\_\_ 4 Copies of Contract

\_\_\_\_\_ Copy of IFB/RFP

\_\_\_\_\_ STD 15 or STD 215

\_\_\_\_\_ Copy of All IFB/RFP Responses

\_\_\_\_\_ Sole-Source Justification  
(STD 821)\_\_\_\_\_ IFB/RFP Score Sheets  
(including evaluators)

\_\_\_\_\_ Copy of Advertisement

\_\_\_\_\_ Bid Opening Attenders List

\_\_\_\_\_ Notice of Intent to Award

\_\_\_\_\_ Reason for Lateness

\_\_\_\_\_ Multiyear Justification

\_\_\_\_\_ DVBE Evaluation and Documentation

\_\_\_\_\_ Cost Reasonableness

\_\_\_\_\_ Resolutions

\_\_\_\_\_ Drug Free Certification  
(STD 21)

\_\_\_\_\_ AG Approval

\_\_\_\_\_ Insurance Certificate

\_\_\_\_\_ STD 19 Statement of Compliance

\_\_\_\_\_ STD 204

\_\_\_\_\_ IWMB Approval  
(recycling contracts only)

\_\_\_\_\_ IFBs/RFPs

\_\_\_\_\_ **G.C. 19130 Justification**

\_\_\_\_\_ Other Approval Needed

COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## 5. COMPETITIVE BIDDING METHODS

### 5.00• INTRODUCTION

This chapter provides recommended guidelines and procedures that should be used when seeking vendors and contractors to perform services and for consultant service contracts. Most of these guidelines are based on existing state policy and established practices; some are also based on statutory requirements.

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## 5.02 • STATUTORY AND REGULATORY POLICY REFERENCES

(Rev 1/01)

- A. Public Contract Code Sections
  - 1. Disabled Veteran Business Enterprise participation (PCC § 10115)
  - 2. Service contracts (PCC §§ 10339 - 0345)
  - 3. Consultant services contracts (PCC §§ ~~10372~~ **10339** - ~~10378~~ **10345**)
  - 4. Conflict of interest by current and former state employees (PCC § 10410 - 11)
- B. Government Code Sections
  - 1. Target Area Contract Preference Act (TACPA) (GC §§ 4530 - 4535)
  - 2. Employment-Enterprise Zone Act (EZA) (GC §7080)
  - 3. Local Military Base Recovery Area Act (LAMBRA) (GC 7113.5 - 7114)
  - 4. Antitrust claims (GC §§ 4550-4554)
  - 5. Small business bidder preference (GC § 14838)
  - 6. Nondiscrimination compliance programs (GC § 12990)
  - 7. California State Contracts Register advertising (GC §§ 14825 - 14829.2)
- C. Title 2, California Code of Regulations
  - 1. Contract protest procedures (§ 1195)
  - 2. Application of small business, TACPA, EZA and LAMBA preferences (§ 1896 et seq.)

## 5.03 • FUNDAMENTAL RULES

(Rev 10/98)

- A. An agency may not draft any competitive bidding document (i.e., IFB or RFP) in a manner that limits bidding directly or indirectly to any one bidder (PCC §§ 10339. ~~and 10372~~).
- B. Services may not be split to avoid the need to advertise or obtain competitive bids. In particular, a series of related services that would normally be combined and bid as one job cannot be split into separate tasks, steps, phases, locations, or delivery times to avoid adhering to a state law, policy, or departmental procedure.
- C. Sealed bids must be received at the place and by the time stated in the IFB or RFP. Bids received after the time stated in the solicitation document are not valid regardless of the circumstances causing the late submittal.
- D. The sealed cost bids for an IFB and RFP primary must be publicly opened (PCC §§ 10341, 10344. ~~10374, and 10377~~).

## 5.04• STANDARD STATE CONTRACTING PROCESS

(New 1/01)

Effective July 1, 2000, the DGS/OLS adopted a new standard process for state contracting. This new standard process is based on a multiple year Pilot, wherein efficiencies and benefits were identified and incorporated into the process. Currently, agencies may use either the new standard process based on the STD 213 and STD 15 Forms, or the more familiar process based on the STD 2, STD 13 and STD 15 Forms. However, in the future the latter forms will be come obsolete. The most notable difference between the processes are only one complete package, and three signed 213s need be sent for OLS review, and the use of “incorporation by reference” and model IFBs and RFPs for use by state agencies. Standard language and model agreements can be downloaded from the DGS/OLS web site at [www.dgs.ca.gov/ols](http://www.dgs.ca.gov/ols). It is advisable to periodically check the web site for future revisions.

## 5.05 • PRELIMINARY CONSIDERATIONS AND DECISIONS

(Rev 1/01)

Many of the questions and decisions needed to establish a sound basis for a final contract must be addressed by the contract users. They are the individuals most concerned with both quality and usability of what will be produced under the contract. They are the individuals best equipped to ask and to answer the main questions about the performance leading to the final service or product that prompts the need for the contract.

### A. Primary Contracting Considerations

1. What type of service is needed and why and when is it needed?
2. Can services be provided within the agency? **(If agency staff cannot provide the services, a justification consistent with Gov. Code §19130 is required.)**
3. Can another state agency provide the service through an Interagency Agreement?
4. If an outside contractor is to be used, how will the contractor be obtained? Will it be necessary to competitively bid, or does one of the exemptions to bidding apply?
5. Will another state agency be offered an opportunity to bid on the contract, and if so, the bid document should notice other bidders of this fact.
6. What type of contract is involved? Commodities, goods, I/T Service, I/T Consulting Service, non-I/T Service, non-I/T Consulting Service? See SCM Section 1.45 on proper classification of contracts.

Note: The Scope of Work is the key to a satisfactory contract. The level of satisfaction depends on fully assessing and defining the contract need. The determination of a level of quality sufficient to meet the need and guarantee the desired outcome and identification of the capability and qualifications required of a contractor to accomplish the outcome will produce a successful contract

**5.06 • COMPARISON CHART OF BIDDING METHODS**

(Rev 1/01)

Table 5.1  
Comparison of Bidding Methods

Considerations	Invitation for Bid	Primary RFP	Secondary RFP
When this method is typically used	To obtain simple, common, or routine services that may require personal or mechanical skills. Little discretion is used in performing the work.	To obtain complex services in which professional expertise is needed and may vary. Where different methods and approaches may be applied during performance.	To obtain very complex and/or unique services in which professional expertise and methods may vary greatly. Creative or innovative approaches are needed.
Cost/value of services	\$1,000 <b>\$5,000</b> or more	\$1,000 <b>\$5,000</b> or more	\$1,000 <b>\$5,000</b> or more
CSCR advertising	Yes. (See Note below.)	Yes. (See Note below.)	Yes. (See Note below.)
Bidders' conference	Optional. Held if necessary to clarify service needs.	Optional. Held if needed to clarify service needs.	Optional. Held if needed to clarify service needs.
How award is made	Lowest responsible bidder: public bid opening	Lowest qualified responsible proposer; public bid opening	Highest-scored responsible proposer
Oral Interviews	Not applicable.	Optional. Held if needed.	Optional. Held if needed.
What information is submitted	Bid form and other material deemed necessary by the awarding agency.	Narrative proposal and a separate envelope containing cost information.*	Narrative proposal, including a cost component, in one envelope
Statement of work (SOW) considerations	SOW is predeveloped.	Objectives, major tasks, and timelines are identified. Proposer offers detailed work plans, methods, and so forth.	Goals and objectives are stated. Proposer offers detailed work plans, approaches, methods, and so forth.

\* If DVBE documentation contains dollar amounts rather than percentages, that information should be included in the cost envelope

Note: Exception: See SCM 5.80 B for contracts under \$50,000 **\$100,000** awarded to a certified small business.

Considerations	Invitation for Bid	Primary RFP	Secondary RFP
How small business preference is applied	The cost bid of a certified small business is reduced for evaluation purposes by 5 percent of the lowest cost bid offered by a noncertified small business.	The bid of a certified small business is reduced for evaluation purposes by 5 percent of the lowest cost offered by a noncertified small business.	Points for cost are given to a certified small business after being reduced for evaluation purposes by 5 percent of the lowest cost offered by a noncertified small business
Is TACPA/EZA/LAMBRA applied?	If the total contract is more than \$100,000 and the work site is not fixed.	If the total contract is more than \$100,000 and the work site is not fixed.	If the total contract is more than \$100,000 the work site is not fixed.
DVBE applied?	Dependent on agency decision.	Dependent on agency decision.	Dependent on agency decision.

## 5.07 • DIFFERENCES BETWEEN IFBs AND PRIMARY RFPs

Rev(1/01)

The general differences are indicated in Table 5.2. To easily distinguish the two methods, different terminology is used. Generally, in IFBs the terms Bid and Bidder are used, and in RFPs the terms Proposal and Proposer are used, although the Public Contract Code uses them interchangeably.

Table 5.2  
Differences Between IFBs and Primary RFPs

Invitation for Bid	Primary Request for Proposal
Bidders may need to certify only that they meet the IFB requirements. It is optional whether to collect a certification or bidder information.	Narrative proposals containing varying amounts of proposer information are usually required to be submitted.
Sealed bids or price quotes are submitted. A single-envelope or two-envelope process may be used.	Sealed cost proposals are submitted in separate envelopes from the narrative proposals.
A pass/fail determination is made for responsiveness to IFB requirements. This can be accomplished after bids are opened and read aloud.	Proposals are reviewed for responsiveness to RFP format requirements. Proposals may be rated or scored. Cost/price offerings of qualified proposers are opened and read aloud for responsible proposers.
Bidders' conferences are optional but are rarely needed.	Bidders' conferences are optional but are often held to clarify the services being sought.



Invitation for Bid	Primary Request for Proposal
To obtain services valued at <del>\$1,000</del> <b><u>\$5,000</u></b> or more.	Same as for IFB.
IFBs are used to secure simple services calling for routine personal or mechanical skills. Work methods are standard, or little discretion exists in terms of how the work is performed.	RFPs secure complex services calling for technical and/or professional skills and expertise. The proposer uses discretion in applying various approaches or methods.
Bidder capabilities are not rated or scored. Bidders either pass or fail IFB requirements.	Proposer qualifications, capability, and experience may be scored on evaluation criteria stated in the RFP.
The statement of work (SOW) is clearly stated. Bidders are generally told what, how, when, and where work and services are to be done.	The SOW contains as much detail/depth as possible but may include an agency's needs, goals, and objectives. Proposers are relied on to recommend methods or approaches to meet an agency's needs.
Award is made to the lowest responsible bidder.	Same as for primary IFB.

## 5.08 • COMPETITIVE BIDDING OPTIONS

(Rev 1/01)

- A. Three competitive bids or proposals are required unless one of the following applies:
1. Emergency. The work or service is for the immediate preservation of the public health or welfare, or the safety or protection of state property (PCC §§ 1102 and **10340**).
  2. **The contract is exempt from advertising in the California State Contracts Register being competitively bid as listed in SCM 5.80.**
  3. Sole source exemption. The Director of DGS has approved exemption from competitive bidding because the state's best interests are better served by exemption (SCM 5).
  4. Governmental agency contract. The contract is with another state, local, or federal agency or with the University of California, the California State University, or a California community college or any of their auxiliary organizations (PCC § **10340**).

Note: These contracts or interagency agreements cannot be used to circumvent or bypass the state's bidding requirements, SCM 1 and 3.

5. Community Based Rehabilitation Program (CRP). The exemption applies for workshops conducted in accordance with W&I Code § 19404.
6. Services for which the State has entered into a master contract.
7. When the agency awarding the contract has advertised the contract in CSCR and has solicited all potential contractors known to the agency but has received less than three bids or proposals.
8. **DVBE participation requirements apply to all contracts, even those exempt from competitive bidding.**

- B. Agencies may put a tie breaker in the solicitation document indicating how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are coin toss or other similar objective method. Such event must be observed by witnesses and ideally affected bidders would be invited. **See SCM 8.21.C for ties between certified small businesses and DVBES.**

Note: There is no requirement to award a contract if, in the opinion of the state agency, no bids or proposals were received containing a reasonable contract price.

## 5.09 • REQUIRED LANGUAGE IN COMPETITIVE BIDDING

(Rev 11/99)

- A. All competitive bid proposal packages should contain (as applicable):
1. Date, time, and place bids are due (PCC §§ 10341, **and** 10344, 10374, and 10377).
  2. Small Business Preference Program information (GC § 14835).
  3. Conflict of Interest provisions (PCC §§ 10410, 10411).
  4. Corporate qualifications to do business in California (R&TC § 23101).
  5. Drug-free requirements (GC § 8350 et seq.).
  6. Statement of Compliance (GC § 12990(a - f), 2 CCR § 8113).
  7. Disabled Veteran Business Enterprise participation goals, if applicable (PCC § 10115 et seq.).
  8. Antitrust claims (GC §§ 4552, 4553, and 4554).
  9. TACPA preference, if applicable (GC § 4530 et seq. and 2 CCR § 1896.30).
  10. EZA (GC § 7070).
  11. LAMBRA (GC § 7118)
  12. Protest procedures (SCM 6.35).
- Additional references: PCC §§ 10339, 10340, 10344, 10348, ~~10372~~.

Note: The general terms and conditions of the contract and any unique provisions should be included in the bid document to let bidders know the requirements.

## 5.10 • COMPETITIVE BIDDING ISSUES

(Rev 1/01)

- A. Documentation. Potential bidders must be formally notified of the bid opportunity through CSCR advertisement.
- B. Less than three bids. If three bids are not received, the state agency will prepare a complete explanation and justification, including the names and addresses of the firms, individuals specifically notified, and retain the document in the agency's contract file. (PCC §10340)
- C. Small businesses. Certified small businesses must be granted a preference of five percent of the lowest cost or price offered by the lowest responsible **bidder or** proposer who is not a certified small business. Additional preferences under TACPA and EZA **and LAMBRA** shall be granted as applicable when cost of the service will exceed \$100,000 and the work site will not be fixed by the terms of the contract. Exceptions for electronic data processing (EDP) services, architectural and engineering services and situations involving multiple contract awards are noted in the cited regulations. Additional information on TACPA and EZA **and LAMBRA** can be obtained from DGS/Office of Small Business Certification and Resources **Protest and Dispute Resolution Unit** (See 2 CCR § 1896 et seq. and SCM 8.)

- D. EDP. In certain instances EDP goods and services are exempt from competitive bidding (SAM § 5205, SCM 3).
- E. Once a contract is awarded, the solicitation has ended. If the Contractor awarded the contract fails to perform the contract, the agency cannot award to the second lowest bidder without re-bidding, or obtaining a sole source approval.**

## 5.11 • INVITATION FOR BIDS

- A. An Invitation for Bids (IFB) must be exact and clear to ensure that all bids received will be competitive as the result of all bidders bidding on exactly the same work or equipment, specifications, and contract obligations.

An IFB seeks an answer to the following:

“Here is exactly what we need to have done. Here are the qualification requirements, performance specifications, time frames, and requirements that must be met. How much will you charge us?”

- B. An IFB must indicate the specific requirements of the state. Timely bids are reviewed to determine which bidders meet the requirements indicated in the IFB.

For each specific requirement, a basic yes or no answer is required. There is no “fully,” “barely,” “almost,” or “exceeded” level of evaluation. After identifying which bidders are responsible to all requirements stated in the IFB, it is then a matter of determining which bidder is offering the lowest cost for its services. Bidders should not be relieved from their bids because of fraud or mistakes they make in presenting the costs for their services.

Note: Fraud includes presenting false or misleading information with the intent to trick, misrepresent, or deceive. It also includes concealment or nondisclosure of information for the purpose of misleading.

- C. All bids may be rejected whenever the determination is made that the bids received are not really competitive, when the cost is not reasonable, or when the cost exceeds the amount expected. Although many agencies reserve the right to reject any bid, no bid may be rejected arbitrarily or without reasonable cause.

## 5.15 • REQUEST FOR PROPOSALS

(Rev 10/98)

- A. A Request for Proposals (RFP) must be as precise as possible to ensure that all proposals are accomplishing the same goal. See SCM 5.09 for the type of information to include in an RFP. An objective evaluation procedure must be used to determine which proposers have complied with the RFP requirements and to whom the contract should be awarded.
- B. An RFP seeks an answer to the following:
- “Here is what we wish to accomplish. Here are the qualification requirements, performance specifications, time frames, and other requirements that must be met. How would you accomplish the job for us and for how much?”
- C. An RFP should not be used when the service or equipment to be hired is standard, routine, or common, or when there is a standard associated with the service or equipment to be hired. For example, the hiring of a pest-control firm to do routine exterminations should be accomplished through an IFB, not an RFP.

- D. There are two methods for evaluating proposals and awarding contracts (PCC §§ 10344 and 10377):
1. The preferred method according to DGS policy is the primary (two envelope) method. By this method, the contract is awarded to the responsible and qualified proposer offering the lowest cost for its services. For more information on the primary RFP method, see SCM 5.20.
  2. The other method is the secondary method, which requires evaluation of proposals by an evaluation committee with the award made to the responsible proposer earning the highest score. For more information on the secondary RFP method, see SCM 5.25.
- E. Before soliciting proposals, agencies must determine which method of evaluation will be used in order to include the appropriate information in the RFP, as follows:
1. A comprehensive evaluation plan must be developed and finalized. All rating and scoring factors which are to be considered must be included, criteria for considering costs to the state must be developed, and the evaluation plan must provide for a fair and equitable evaluation of all proposals (PCC §§ 10344 and 10377).
  2. All proposals and all evaluation and scoring sheets must be available for public inspection at the conclusion of the scoring process (PCC §§ 10342 and 10375).
- F. All state agencies shall include a summary of their efforts to solicit quotations from small businesses and the results of such efforts. Such information shall accompany each Contract Transmittal, STD 15 or STD 215, together with the reasons that the agency was unable to use an IFB or the RFP primary method for the contract award, if such was the case. The failure to justify use of the RFP secondary method may result in contract disapproval if a certified small business was prejudiced by use of the RFP secondary method.
- G. When an evaluation committee is appointed, the majority of the voting members used in the selection process shall be from the agency soliciting the proposals or awarding the contract. **Private Contract** consultants may not be voting members of the committee or participate in committee discussions of how rating points are assigned. **Private Contract** consultants may only be used to provide clarification to the committee members. If the contract is awarded by a state board or commission, the recommendations of an evaluation committee shall be considered advisory in nature, and the board or commission must make the ultimate decision unless statute expressly permits the board or commission to delegate that responsibility (PCC §§ 10344 and 10377).

## 5.17 • PRIMARY RFP AND SECONDARY RFP DIFFERENCES

(Rev 1/01)

Table 5.3 outlines the differences between primary and secondary RFPs.

Table 5.3  
Differences Between Primary and Secondary RFPs

Primary RFP	Secondary RFP
Services are complex, but not uncommon or unique.	Services are complex, uncommon, or unique.
Performance requires varying methods or approaches but not innovation or creativity.  The methods and approaches used may not differ significantly from one proposer to another, which allows costs to be used as the deciding factor for making the award.	Performance requires unusual, innovative, or creative techniques, methods and approaches.  The quality of expertise and approaches, methods, and innovation used may differ significantly from one proposer to another.
The statement of work (SOW) is fairly well defined in terms of services or functions that must be performed as are the time frames that are required.	The SOW is less precisely defined and may contain only the agency's needs and goals or objectives that must be met.
Costs offerings are submitted in a separate sealed envelope apart from the narrative proposal.	Price may appear as a section within the narrative proposal and must be a significant factor. Price does not mean cost effectiveness.
Narrative proposals are reviewed, evaluated, and scored for compliance with format, content, and qualification requirements.	Narrative proposals are evaluated and scored. Oral interviews are optional. Passing points may be set to determine the finalists.
Cost proposals are not scored.	The cost component is either scored against criteria stated in the RFP or subjected to a formula to convert the quoted cost into score or point values.
Qualified proposals that are responsive to the RFP requirements will have their cost/price offerings publicly opened and read.	Cost offerings are not announced or publicly read.
Following the opening and reading of cost offerings, cost offerings are then adjusted for applicable small business, TACPA, EZA and LAMBRA preferences.	Cost offerings are adjusted for applicable small business, TACPA, EZA and LAMBRA preferences.
A certified small business receives an amount equal to five percent of the lowest cost offering submitted by a non-certified small business reduced from its cost offering.	A certified small business will have <b><u>its cost points re-calculated after reducing its cost figure by an amount equal to</u></b> <del>added to its proposal score</del> five percent of the cost component <del>points earned by</del> <b><u>of</u></b> the highest-scored proposal submitted by a non-certified small business
Award is to the responsible proposer offering the lowest cost for its services.	Award is to the responsible proposer earning the highest overall score.

## 5.20 • REQUEST FOR PROPOSAL: PRIMARY METHOD

(Rev 10/98)

- A. In addition to the requirements set out in SCM 5.09, the RFP must include a requirement that each proposer submit its proposal with the cost proposal and all cost information in a separate, sealed envelope (PCC §§ 0344 and 10377).
- B. Proposals received as a result of the primary RFP method must be evaluated and the contract awarded in the following manner:
  - 1. Review all eligible proposals (i.e., those filed on time and in the manner prescribed) to determine which ones meet the format requirements and the standards specified in the RFP. Proposals meeting the minimum standards and format requirements can then be rated or scored. Proposal standards should be set so that every proposer deemed to meet the standards specified in the RFP could perform at the level required.
  - 2. The sealed envelopes containing the cost proposal for those proposals that meet the format requirements and standards shall then be publicly opened and read. The contract must be awarded to the lowest-cost responsible proposer.

## 5.25 • REQUEST FOR PROPOSAL: SECONDARY METHOD (POINT COUNT OR HIGH SCORE)

(Rev 1/01)

- A. Use of the secondary RFP method should be limited to those instances in which agencies are seeking a unique solution to a problem or situation that cannot necessarily be resolved by the lowest bidder (i.e., when the methods, approaches, and procedures to be used in performing the work are of primary importance).

RFPs which provide for a contract award using the secondary method (point count) have the incidental affect of diluting the benefit of the small-business preference. Therefore, DGS discourages the use of such RFPs.

Contracts that are awarded through the use of the secondary method will not be approved by DGS unless the agency can demonstrate that responsible certified small businesses were not prejudiced by use of the secondary RFP method. DGS may consider the secondary RFP method to be prejudicial against certified small businesses if a responsible certified small business would have qualified as the proposer offering the lowest cost. It is therefore suggested that agencies intending to use the RFP Secondary method get approval from DGS/OLS prior to solicitation explaining why the RFP Secondary method is in the State's best interest and does not prejudice small businesses.

- B. **Agencies should discuss the RFP with their assigned OLS attorney before soliciting proposals where cost points are less than 30% of the total points.** ~~Any evaluation and scoring method resulting in an award to the highest-scored proposal must ensure that substantial weight shall be given to the contract price offered by the proposer. Contracts may not be approved by DGS/OLS where cost points are less than 30% of the total points. Such situations should be discussed in advance with the agency's OLS attorney. When scoring a proposal, cost/value effectiveness and cost adequacy may be judged and evaluated, but this must be in addition to the actual price component (PCC §§ 10344 and 10377).~~
- C. In those instances in which an agency seeks a novel type of approach or solution to a situation or problem and the agency believes the contractor offering the lowest cost will not necessarily employ the most effective methods, the agency can use the secondary RFP method.
- D. Proposals received as a result of the secondary RFP method must be evaluated and the contract awarded in the following manner (PCC §§ 10344 and 10377):

1. Review all eligible proposals (i.e., those that are received in the time and manner prescribed) to determine which ones meet the format requirements specified in the RFP
2. Those proposals that meet the format requirements shall then be submitted to an agency evaluation committee. The evaluation committee will evaluate and score proposals using the methods specified in the RFP. The contract must be awarded to the responsible proposer whose proposal is given the highest score by an evaluation committee.

## **5.30 • FORMS AND CERTIFICATIONS FOR COMPETITIVE BIDDING DOCUMENTS**

(Rev 1/01)

By law, regulation, or DGS policy, various contracts are required to contain, by reference or attachment, certain forms and/or certifications. Therefore, potential bidders and proposers should be advised of these requirements when they inquire about contracting opportunities with the state.

### **A. Nondiscrimination Compliance Statement**

A Nondiscrimination Compliance Statement - form STD 19, or an equivalent certification, must be included in all bids or proposals submitted by contractors for nonexempt contracts of \$5,000 or more. Instead of including the Nondiscrimination Compliance Statement - form STD 19, in a bid document for the bidder's or proposer's signature, the bid document or bid form may contain the following certification:

Nondiscrimination Compliance Statement:

The prospective contractor's signature affixed hereon and dated shall constitute a certification, under the penalty of perjury under the laws of the State of California, that the bidder/proposer has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 (a - f) and of Title 2, California Code of Regulations, Section 8113. See SCM 4.

### **B. Small Business Preference Notification**

Each agency in awarding contracts for the purchase of goods, for the lease or rental of goods with the option to purchase the same, for public works, or for the performance of services shall grant to qualified small businesses a preference according to applicable regulations. Each IFB and RFP shall, as applicable, contain information about the application of the small business preference and how to obtain such preference. To be granted such preference, qualified businesses must submit an application meeting all the requirements to the DGS/Office of Small Business Certification and Resources, no later than 5:00 p.m. on the date bids will be opened (GC § 14835, 2 CCR § 1896.2 et seq.).

For specific instructions on how to apply the small-business preference to eligible bids and proposals see SCM 8. The small-business preference may not exceed \$50,000.

### **C. Antitrust Claims**

1. The Government Code Chapter on Antitrust claims contains the following definitions:
  - a. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
  - b. "Public purchasing body" means the state or the subdivision or agency making a public purchase. See Government Code Section 4550.

2. The following antitrust provisions must be included in the bid documents:
  - a. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. See Government Code Section 4552.
  - b. If the awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid
  - c. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
- D. Corporate Qualification to do Business in California
  1. When contracts are to be performed in the state by corporations, the contracting agencies should obtain verification that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
  2. "Doing business" is defined in R&TC §23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
  3. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies may determine whether a corporation is in good standing by accessing the Office of the Secretary of State's web site at [www.ss.ca.gov](http://www.ss.ca.gov). ~~(after 11/15/99)~~.
  4. Contracting and approving agencies may obtain assistance from the Franchise Tax Board in evaluating a contractor's claim of exemption. Inquiries should be directed to the Exempt Organizations Unit desk, telephone (916) 845-4171.
- E. Drug-Free Workplace Certification

DGS recommends including either a Drug-Free Workplace Certification - STD 21, in all bid documents or using the specific language in each bid document (SCM 7).



F. Insurance Requirements, If Applicable

DGS/Office of Risk and Insurance Management requires that proof of insurance, meeting the requirements specified in SCM 3, be submitted with each contract for services that will involve a hazardous activity.

DGS recommends placing a statement requiring proof of adequate insurance in applicable bid documents used to procure services that will involve a hazardous activity. Likewise, any agency that requires a certificate of insurance for any other reason (e.g., medical malpractice) should consider requiring proof of applicable insurance requirements in bid documents.

Examples of service contracts involving hazardous activities can be found in SCM 3.12.

G. Target Area Contract Preference Act (TACPA)

Each IFB or RFP for goods or services, in which the cost is estimated to be in excess of \$100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. Bidders and proposers may apply for such preferences by means of a Target Area Contract Preference Request - STD 830S (for services) or STD 830G (for goods) (2 CCR § 1896 et seq., see also SCM 8). **Contact DGS/Protest and Dispute Resolution Unit for information on TACPA at (916) 323-1468**

H. Enterprise Zone Act (EZA)

Each IFB or RFP for goods or services in which the cost is estimated to be in excess of \$100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. The percentage preferences allowed for EZA are similar to those allowed for TACPA (2 CCR § 1896 et seq.). Bidders may apply for the EZA preference using the Enterprise Zone Act (EZA) Request Form Std. 831. ~~Contact DGS/Office of Small Business Certification and Resources~~ **Protest and Dispute Resolution Unit** for information on EZA at (916) ~~322-5478~~ **323-1468**. An additional source of information on this topic is in GC § 7080 et seq. (SCM 8.)

I. Local Agency Military Base Recovery Area Act (LAMBRA)

Each IFB or RFP for goods or services in which the cost is estimated to be in excess of \$100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. For percentage preferences allowed for LAMBRA see Gov. Code § 7118. Bidders may apply for the LAMBRA preference using the Local Agency Military Base ~~Recovery~~ **Recovery Area** Act (LAMBRA) Request Form Std. 832. ~~Contact DGS/Office of Small Business Certification and Resources~~ **Protest and Dispute Resolution Unit** for information on LAMBRA at (916) ~~322-5478~~ **323-1468**.

J. Statewide Disabled Veteran Business Enterprise (DVBE) Participation Goals

Each state agency is required to have DVBE participation goals **in contracts** for construction, professional services, materials, supplies, equipment, alteration, repair, and improvement (PCC § 10115 et seq.) except those services subject to Chapter 6 commencing with GC § 16850). Participation goals apply to the overall dollar amount expended each year by the awarding agency. Each agency is allowed to determine the dollar level and types of contracts that are subject to or exempt from DVBE goal participation.

If the contract is of a type or total dollar amount subject to DVBE participation in accord with departmental procedures or regulations, the bid document used to procure such services, should contain applicable DVBE participation instructions and forms and DVBE audit language.

For information on DVBE participation goals and good-faith effort requirements, refer to applicable state agency policies, procedures, or regulations or the statutes on this topic. (SCM 8.)

**K. Priority Hiring Considerations for Contracts With a Value in Excess of \$200,000**

Every contract for services in excess of \$200,000 shall contain a provision requiring the contractor to give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under W&I Code § 11200 (PCC § 10353).

DGS recommends including the following paragraph or a similar provision in each bid document that will result in a contract award exceeding \$200,000:

If the resulting contract will have a total contract value of \$200,000 or more, the contractor is hereby advised that it will be obligated to give priority consideration in filling vacancies in positions funded by the resulting contract to qualified recipients of aid under Welfare and Institutions Code Section 11200. This requirement shall not interfere with or require a violation of a collective bargaining agreement, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

### **5.35 • WHAT TO INCLUDE IN AN RFP**

**A. The more thoroughly that a state agency communicates its specific needs, requirements, goals, and objectives in the RFP, the more complete, responsive, and acceptable the proposals received will be. RFPs should include:**

1. A statement of work that contains:
  - a. A clear, precise description of the work to be performed, services to be provided, problem to be solved, or the goals and objectives to be met
  - b. An explanation in realistic terms of what the proposer is expected to accomplish including any desired approach to the problem and the specific functions, tasks, or activities that must be performed, in their order of importance and probable sequence
  - c. Practical and policy information, technological requirements or specifications, and legal limitations, if any
  - d. Specific questions to be answered or issues to be addressed
  - e. Performance timelines or completion dates
  - f. Required quality control standards to be met, if applicable
  - g. A description of the items, products, or results to be delivered
  - h. The format and number of copies of the completed progress reports and final report, if applicable
  - i. The extent and nature of the assistance and cooperation from the state that will be available to the proposer

2. Proposal instructions should contain a description of the format that proposals must follow and the elements they shall contain. The factors to be used in proposal evaluation and contractor selection may not be changed or added after the RFP has been distributed without adequate notice to all potential proposers through an addendum. RFPs must provide:
  - a. Specifications, including:
    - Standards the agency will use in evaluating proposals
    - Information on how the state will select the winning proposal
  - b. Time schedules, including:
    - Date to submit questions or seek clarification of the RFP
    - Date of Proposers' Conference, if applicable
    - Date on which the proposals must be submitted
    - Timetable the agency will follow in reviewing and evaluating proposals
    - Date of cost proposal opening
    - Date of award
    - Anticipated contract term, including commencement and completion dates
3. Notice of payment terms or restrictions, including:
  - a. Whether and to what extent progress payments will be allowed
  - b. Whether payments are subject to payment withholds
  - c. Penalties for late or inadequate performance
  - d. Known or estimated budgetary limitations on the contract price, if applicable
4. Applicable contract provisions, including:
  - a. Actual or sample contract language or boilerplate contract provisions that will appear in the resulting contract including the provisions printed on the back of the STD 2 Standard Agreement.
  - b. It is important to include any terms or provisions that will place a contingent liability on the contractor or affect the contractor's operating costs.
5. Requirements that prospective proposers must address or include in their proposal, if applicable, such as the following:
  - a. A description of the proposer's qualifications, including:
    - Proof that the proposer, if a corporation, is in good standing and qualified to conduct business in California
    - For proposers that are nonprofit organizations, proof of nonprofit status
    - Copies of current business licenses, professional certifications, or other credentials
    - Proof of financial solvency or stability (e.g., balance sheets and income statements for one year or more), as deemed applicable
    - A list of current or former references for whom the proposer has performed similar work
  - b. A brief list of similar types of contracts that were successfully concluded, with a sample of such work
  - c. A description of the lead personnel and anticipated supporting personnel to be employed during performance (by classification or title) and their qualifications to perform the work
  - d. Identification of a project coordinator (recommended for all bid documents but required when consultants are sought)

- e. Resumes for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the services (required by law for consultant contracts)
  - f. An overall description of the techniques, approaches, and methods to be used in performing the services. For cost reimbursement contracts with consultants, the amount of time and manpower to be expended and the equipment and facilities to be utilized, if applicable
  - g. If subcontractors are contemplated, identification of those persons or firms, the portions and monetary percentages of the work to be done by the subcontractors, how they were selected and why, resumes of each major subcontract participant, and a description of how subcontracted work will be controlled, monitored, and evaluated
  - h. The total cost of the project, with a detailed breakdown showing how the costs were determined, and the desired method of payment. The detailed budget breakdown may include:
    - Identification of position/classification titles funded
    - Salary rates or ranges
    - Percentage of time devoted to the work
    - Fringe benefits
    - Operating expenses
    - Travel and per diem expenses
    - Overhead or indirect costs
    - Subcontractors with the same type of cost details
    - Other costs
6. Identification of services provided on a flat fee, lump sum, or unit rate basis.

#### **5.40 • GUIDELINES FOR CRITERIA AND CONSIDERATIONS IN EVALUATING RFPs**

- A. The following are suggested criteria that may be used in evaluating proposals:
1. Does the proposing firm understand the agency's problem or needs?
  2. Can the proposer fit this work into its existing obligations?
  3. Is the approach to the problem, recommended method, and procedure reasonable and feasible?
  4. Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
  5. Does the firm have the organization, management capability and competency, fiscal and personnel resources, and experience to perform the services being sought?
  6. Has the firm had experience performing work of a similar nature, size, and scope?
  7. Does the proposer's past experience complement the services being sought, or is the proposer's past experience appropriate to qualify the proposer to perform these services?
  8. What are the professional qualifications of the personnel that the firm will commit to the project?
  9. Did the proposer allocate sufficient staff resources?
  10. Has the proposer addressed all goals, objectives, service demands, and required

deliverables specified in the RFP?

11. Does the proposer appear to be able to handle and resolve unanticipated complications and delays without interrupting the delivery of services?
12. Are any proposed timelines for performance presented by the proposer feasible?
13. Did the proposer include plans that will show how performance will be monitored and measured to ensure that all services are successfully performed and that the objectives, goals, and requirements are met?
14. Does the proposer appear to have the capacity to manage fiscal resources responsibly?
15. Does the proposer have sound fiscal, accounting and cost-monitoring or budget-monitoring procedures in place?

## **5.60 • TIME FOR COMPLETION OF THE COMPETITIVE BIDDING PROCESS**

(Rev 3/98)

- A. The bidding process often takes three to eight months from the time the advertisement is placed until the award is made. This time frame does not take into account internal approval steps or delays caused by protests. Resolution of protests may add a delay of one to three months.
- B. The time needed to complete a bid proposal process will depend on the type of competitive bidding method used, the complexity of the services required, the number of bids or proposals received, whether a bidders'/proposers' conference is held, whether DVBE participation is required, whether protests are received, and other factors.

## **5.65 • POSTING AND NOTIFICATION REQUIREMENTS**

(New 11/99)

- A. RFP. After selecting a bidder for possible contract award under an RFP (Primary or Secondary):
  1. The agency must post, in an area accessible to the public, a letter of intent to award (PCC §§ 10345, ~~40378~~)

Note: Agencies may post the letter of intent on their Internet Homepage in addition to, but not in lieu of, the public posting.

2. The contract cannot be awarded for a period of 5 working days (starting the day after posting), during which time the agency must allow all bidders access to all the bid information including all responses and scoresheets used in the evaluation (PCC §§ 10345 ~~40378~~).
- B. IFB. After selecting a bidder for possible contract award under an IFB:
  1. The agency must post, in an area accessible to the public, a letter of intent to award if requested in writing by any of the bidders (PCC §§ ~~40343~~ **10345**).
  2. If the lowest bidder is not being awarded the contract, the low bidder must be notified of that fact five working days prior to contract award. The notice should also include the reason why the lowest bidder is not being awarded the contract.
  3. If the agency is awarding to the lowest responsible bidder, and no requests have been made to publicly post a letter of intent, the agency may award the contract without delay.

## 5.70 • SOLE SOURCE TRANSACTIONS

(Rev 1/01))

A sole source transaction is defined as a procurement or contract for goods or services or both when only a single business enterprise is afforded the opportunity to offer the state a price for the specified goods or services. ~~A sole source request should not be confused with a request for exemption from advertising, as detailed in the SCM 5.80.~~

### A. Sole Source Exemption Request Procedures

1. Contracts may only be awarded without competitive bids or proposals if:
  - a. Approval has been obtained pursuant to Executive Order W-103-94 (MM 94-16); and
  - b. The DGS agrees there is only a single source for the services, and the Procurement Division has approved a Request for Exemption from Contract Advertising - form STD 821, submitted for such purpose (see paragraph 2); or
  - c. The Director of DGS determines that the state's interests are better served by exemption (PCC §§ 10348 and 40380).
2. Approval for a sole source exemption shall be obtained from the DGS/Procurement Division as follows:
  - a. Approval must be obtained pursuant to Executive Order W-103-94.
  - b. The STD 821 must be reviewed and signed by someone at the deputy director level in the originating agency. The Deputy Director may delegate this authority to a subordinate level. The form STD 821 (Request for Exemption) must include:
    - A survey of the market place, if possible, or a narrative of the efforts made to identify other similar or appropriate services (including a summary of how the agency has come to the conclusion that such alternatives are either inappropriate or unavailable); or
    - An explanation about why the survey or effort to identify other services was not accomplished.
3. Contracts awarded pursuant to an MSA do not need Sole Source approval (Form 821)
4. **Contracts awarded under emergency provisions do not need Sole Source approval (Form 821)**
5. **Contracts awarded as a sole source transaction still require civil service consideration as outlined in SCM 7.05.**

Note: Contracts exempt from advertising are not automatically exempt from the competitive bid process or DVBE requirements. (SCM 5.80 and 8)

### B. Executive Order On Sole Source

The Governor's Executive Order, W 103-94, issued effective August 17, 1994, prohibits the use of sole source contracts and procurements except in a state emergency when required for public health and safety. The Executive Order assigns a high level of accountability in the decisions leading to sole source transactions by requiring cabinet-level approval by an agency secretary. Current state policy requires contracts to be competitively bid except under specific circumstances as set forth by law or as determined to be in the best interests of the state.

C. Approval by Agency Secretary

In accordance with existing policies, departments must submit to DGS their requests for approval for certain sole source contracts for services together with full and complete justification for limiting the competition. Existing policies require written approval by the agency head responsible for the originating department of all sole source transaction requests or for those transactions exempt from DGS review.

D. Alternatives to Approval by the Secretary

1. As an alternative to obtaining approval for each individual sole source transaction, departments may obtain approval from the agency head to process certain specified categories of sole source procurements or contracts. A memorandum signed by the agency head approving specific sole source categories must be retained by the requesting department for audit purposes
2. When a transaction falls within a category approved for sole source by the agency head and it is subject to DGS/OLS approval, an authorized department employee must certify that the transaction request has been approved. This certification can be done by annotating the STD 15 or STD 215 as follows: "Approved by the agency head per memorandum dated \_\_\_\_." If the approval covers a sole source transaction that is not required to be submitted to DGS, a certification is not required if a copy of the signed approval memorandum is on file with the contracting agency.
3. Exceptions: It is not necessary to obtain sole source approval for the following types of service agreements or contracts:
  - a. Statewide master agreements (MRA, MSA, MPA)
  - b. Master agreements originally awarded by a department on a competitive basis
  - c. Contracts with the Prison Industry Authority (PIA)

E. Contract Cost Justification

If exemption for a sole source transaction has been obtained from DGS/Procurement Division, or if the contract is in one of the exempt categories, or if fewer than three competitive bids or proposals have been received, the appropriateness or reasonableness of the cost must be justified. When the contract is submitted to DGS/OLS for approval along with the supporting documents, the following factors will be considered:

1. The effort made by the awarding agency to solicit competitive bids, if appropriate;
2. Cost information (budget), which should be in sufficient detail to support and justify the cost of the contract;
3. Cost information for similar services and differences which should be noted and explained;
4. Special factors affecting the cost under the contract; and
5. An explanation of why the awarding agency believes the costs are appropriate.

## 5.75 • ADVERTISING STATE-CONTRACTING OPPORTUNITIES (Rev 1/01))

- A. Contracts of ~~\$1,000~~ **\$5,000** or more, ~~including certain amendments,~~ must be advertised in the CSCR, ~~either as a sole source contract or as a competitively bid contract~~ before the contracting process begins. **Contracts awarded as a sole source, and amendments that require sole source approval will be published in the CSCR by DGS/Procurement Division as part of the sole source approval process. No agency action is required to advertise the sole source approval.**

- B. Certain contracts may be exempted from the advertising requirement or exempted as sole source contracts. See SCM 5.80 (GC § 14825 et seq.; PCC § 10340; and Executive Order W-103-94).
- C. Advertising procedures are as follows:
1. Advertising in the CSCR - The **agency may submit the advertisement using Procurement Division's Internet Web page (www.osbcr.ca.gov), or submit** Form STD 815, should be submitted to DGS/Office of Small Business Certification and Resources **Business Development Unit (contact Mark Andersson at (916) 324-0269 or mark.anderson@dgs.ca.gov)**. ~~either electronically or on the paper form.~~
  2. DGS charges a fee for each ad that appears in the CSCR. There is an additional fee for ads that are not submitted electronically.
  3. If DGS/Procurement Division approves a form STD 821 for an advertising exemption, DGS **will publish a notice of exemption** in the CSCR.

Note: Government Code section 14838.5 eliminates advertising requirements for certain contracts awarded to certified small businesses. See SCM 5.80 B, for specific information.

## 5.80 • CONTRACTS EXEMPT FROM ADVERTISING IN THE CSCR AND COMPETITIVE BIDDING.

(Rev 1/01))

- A. The following contracts are not required to be advertised in the CSCR, nor are they required to be competitively bid: (These exempt contracts do not need sole source (STD 821) approval (GC § 14825; PCC §§ 10348 and ~~10380~~)).

1. Contract With a Governmental Agency:

Contracts or agreements with another state, local, or federal agency; the University of California, the California State University, or a California community college or any of their auxiliary organizations; or an organization acting as a governmental agency under a joint powers agreement.

Note that these contracts or interagency agreements cannot be used to circumvent the state's bidding requirements. (SCM 3.)

2. Contract Amendments for:
  - a. Time extensions, with no additional dollars being added.
  - b. A combination of time and money while protests or other legal actions delay the award of a new contract --- until the protest is resolved or for six months, whichever is first , under the same terms and at the same or lower rates
  - c. If the original contract allowed for additional years and this condition was in the IFB or RFP. (SCM 3.09.8.c).
    - If the contract was bid the additional years were a part of the IFB/RFP.
    - The amendment contains the same terms and conditions of the original contract except for the additional years, new total amount, and the rates bid for the additional years.



Note: Bids with contract periods longer than one year, or with options for additional year extensions, limit access to state contracting opportunities and are therefore against state policy. Multiyear contracts risk non-approval, if prior approval has not been received from DGS/OLS.

3. The specific types of contracts listed below **in (a) through (s) do not require advertisement in the CSCR; they are not required to be competitively bid, and they do not require a sole source approval.** (SAM § 1233):
- a. Emergency contracts which are necessary for the immediate preservation of life or state property;
  - b. Contracts for the work or services of a state, local or federal agency, the University of California, the California State University, a California community college, a foundation or auxiliary organization incorporated to support the universities and colleges, or a Joint Powers Agency;
  - c. Services for which the state has entered into a master service agreement;
  - d. Subvention contracts (non-discretionary grants) with a private or nonprofit entity for the purpose of providing services to the public or segments thereof;
  - e. Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative, or where there is only one distributor in the area for parts and services;
  - f. Contracts for designated contractors that have been selected by a federal, state, city, county, or other regulatory entity, usually through a competitive process to perform a service in a specific geographical area (e.g., ambulance services, calls, garbage, refuse, etc.);
  - g. Medical care services with physicians, local community hospitals, medical groups (related offsite laboratory services are not included), and 911 emergency ambulance calls;
  - h. Proprietary software contracts;
  - i. Contracts for National Professional Examinations;
  - j. Leases or rentals for use as examination sites or space for booths at job/trade fairs;
  - k. Entertainment contracts for state-sponsored fairs and expositions;
  - l. Contracts which are temporary or time-limited appointments to a non-testing civil service classification for the purpose of meeting a time-limited employment need. Selection and compensation for these appointments shall be made in accordance with state civil service requirements;
  - m. Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered;
  - n. Contracts solely for the purpose of obtaining expert witnesses for litigation;
  - o. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff; process serving services and other court ordered services;

- p. Contracts with business entities operating Community Based Rehabilitation Program (CRP), **that are justified under one of the exceptions in GC §19130(b), and which that** meet the criteria established by Welfare and Institutions Code Section 19404. **Note: Contracts with CRPs that are justified under GC §19130(a), are required to be competitively bid.**
  - q. Contracts that can only be performed by a public entity as defined in Unemployment Insurance Code Section 605(b)
  - r. Amendments to existing contracts under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending and a new contract can be executed, but in no case shall this exemption from advertising extend beyond six months; and
  - s. Contracts for conference or meeting facilities, including **Audio/Video equipment rental and** room accommodations for conference attendees.
4. Contracts for transportation (~~courier~~), services pursuant to a Transportation Rate Agreement (TRA), executed by DGS Procurement Division, where no additional services or additional requirements are requested beyond the normal provisions of the TRA.
- B. Contracts awarded to certified small businesses are exempt from advertising under the following conditions (G.C. § 14838.5):
- 1. The contract is awarded to a certified small business, and
  - 2. The contract award is greater than ~~\$2,500~~ **\$5,000** and less than ~~\$50,000~~ **\$100,000** and
  - 3. ~~A minimum of three "sealed" bids were received, and~~
43. **At least** two of the three bids were received from certified small businesses.

## 5.85 • MULTIPLE AWARDS

Agencies may award multiple contracts through a bidding process when there is statutory authority to do so or when there are a variety of services or locations involved.

An agency must have clear, concise descriptions of the work to be performed or goals and objectives to be reached. The number of awards must be identified. A clear objective standard on how awards will be made must be given in the bid documents. Bidders should be given sufficient information to be able to understand what is to be accomplished and to be able to budget accordingly.

## 5.95 • INFORMAL COMPETITION

When services are required and the dollar amount is below ~~\$1,000~~ **\$5,000**, agencies should conduct a market survey of vendors and have them submit unsealed price quotes. There is no limit on the number of vendors that may be solicited. This process may be done by telephone, writing, or fax.

## 6. CONTRACT AWARD PROTESTS

### 6.00 • INTRODUCTION

(Rev 1/01)

This chapter explains the protest process regarding services or consulting services contracts.

Legal references: PCC §§ 10341 - 10345 and ~~§§ 10374 - 10378~~; and 2 CCR §§ 1195 - 1195.6.

Some information about the rules to be followed in deciding a protest may be helpful. It is generally accepted that the one challenging the decisions of an administrative agency bears the burden of proof of its charges that the awarding agency has committed an error in the bid award process sufficiently material to justify invalidation of its proposed award, or that its decisions are lacking a rational basis and are, therefore, arbitrary and capricious. An example of a material deviation would be, among others, failure of the awarding agency to follow pertinent state statutes and regulations or the provisions of its own bid document. When scores of an Evaluation Committee are at issue, more than the opinion of the protestant that scores should have been different, or that different scores could have been awarded based on the same information, is required to invalidate scoring decisions. In view of these parameters, the focus of the reviewing authority (here, DGS) is usually whether the protestant has met its burden of proof that the awarding agency has committed a material error in the conduct of the bid award process.

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## **6.02 • GROUNDS FOR PROTEST**

(Rev 10/97)

- A. Those who may protest are as follows:
  - 1. For IFBs, the lowest responsible bidder meeting the specifications, if not awarded contract
  - 2. For RFPs, any proposer who claims he/she would have been eligible for the award of the contract if the agency had scored his or her proposal correctly or if the agency had correctly followed the procedures specified in Public Contract Code.
- B. There is no basis for protest if the awarding agency rejects all bids or proposals, based on the interests of the state.

The protest process covered in this chapter applies only to services or consultant services contracts that are awarded through an IFB or RFP process. The State Board of Control hears protests involving the procurement of goods, telecommunications, and electronic data processing goods and services. (See PCC §§ ~~10343, 10345, 10376, and 10378.~~)

## **6.03 • PROTEST EXCLUSIONS**

(Rev 10/97)

Under the following circumstances, there is no jurisdiction for the DGS to consider a protest:

- A. The protestant was not a bidder or proposer. The only recourse in that case is through the civil courts.
- B. The protestant has not alleged that it was the lowest responsible bidder or the highest-scored proposer.
- C. The protestant is not in a position to make a supportable assertion that it was the lowest responsible bidder or the highest-scored proposer.
- D. The protest was not submitted timely .
- E. The grounds for the protest do not meet the permissible grounds stated in the PCC.
- F. The contract award is for a type of contract not subject to the protest procedures. This category includes contracts for maintenance, modification, and so forth of real or personal property, including equipment (may be a public works contract); and contracts for professional services under GC § 4525 unless both parties agree to confer jurisdiction on the department.

## **6.04 • ROLE OF DGS IN CONTRACT PROTEST HEARINGS**

(Rev 10/97)

If the protest is based on permissible grounds, DGS will decide the protest and prepare a written decision. Following confirmation by staff that legal prerequisites have been met for a protest, the Director of DGS appoints a hearing officer who will:

- A. Determine whether to review and decide the issues by written submission or public hearing.
- B. Render a written decision within 30 days of the final submission of evidence.

## 6.05 • PROTEST AFFECTING VITAL SERVICES

If a protest is filed and cannot be resolved before the need for vital services occurs, the agency may extend an existing contract for up to six months at the same or lower rates (SCM 5.80). If there is no existing contractor or if the contractor does not wish to continue, a sole source may be obtained for a limited period until the protest is resolved.

## 6.10 • PROCEDURE FOR PROTESTING AN AWARD

(Rev 11/99)

- A. An award may not be made until one of the following occurs:
  - 1. (IFB process) Five working days before making the award, the agency must notify the lowest bidder that the contract is going to another bidder. The notification must be by either telegram, fax, overnight courier, or personal delivery.
  - 2. (IFB process) On written request from any bidder, the agency shall post a public notice of intent to award the contract at least five working days before making the award.
  - 3. (RFP process). At least five working days before awarding a contract, the agency shall post a public notice of intent to award the contract.
- B. An agency should, in the solicitation document (IFB/RFP), inform all bidders of the protest procedures (SCM 5.09).
- C. Inspection of bids is permitted as follows:
  - 1. After bid opening, all bids shall be available for public inspection (IFB process).
  - 2. After proposals are evaluated, and notice of intent to award has been posted, all proposals shall be available for public inspection (RFP process).
- D. There are time limits in which to file a protest. A protest must be filed with the agency and DGS after notice of intent to award the contract, but before the actual award.
- E. The contract award is held up when a protest is received by DGS or the Agency. The agency informs DGS of the written protest, or DGS informs the agency that the award is protested. The contract may not be awarded until the protest is withdrawn or DGS has rendered a decision.
- F. After filing a protest, the protestant has five calendar days to file a detailed written statement of the protest grounds if the original protest did not contain the complete grounds for the protest.
- G. DGS's internal processes are as follows:
  - 1. DGS/Office of Legal Services (OLS) assigns an attorney to review the protest to determine whether DGS has jurisdiction.
  - 2. OLS sends the protestant an acknowledgment letter within 24 hours of receiving the protest and notifies the agency of the receipt of the protest. The letter either:
    - a. Notifies the protestant of the five calendar day limit for filing the required written statement concerning all the grounds of the protest; or
    - b. Informs the protestant that DGS has no jurisdiction over the protest.
  - 3. OLS requests information from the awarding agency about the intended award. If the agency is aware of some reason that the protest should not go forward; this would be communicated to OLS at this time (SCM 6.03).

- H. On receipt of the detailed written statement from the protestant, OLS takes the following action:
  - 1. OLS requests the awarding state agency to forward copies of pertinent documents, including the IFB or RFP evaluation sheets, and scoring criteria.
  - 2. OLS forwards the available protest material to the hearing officer, including:
    - a. The bid protest
    - b. Acknowledgment letter
    - c. Detailed written statement of the grounds for protest
    - d. The bid documents (IFB or RFP)
    - e. Copies of the applicable laws and codes
- I. A protest is evaluated, and a protest hearing format is determined.
  - 1. If the hearing officer determines that the protest is clearly insufficient on its face, without merit, or outside DGS jurisdiction, the protest is denied.
  - 2. If the protest is permissible and the hearing officer determines that the protest should be resolved by written submissions, then OLS sends notices to the interested parties, including the proposed awardee, that the protest will be decided through reviewing submissions of written material to support each party's position and sets the date for submission thereof. Copies of submissions must be sent to all interested parties.
  - 3. If the protest will be resolved by hearing, then: DGS notifies all interested parties of the date, time, and place of the scheduled hearing at least five calendar days before the hearing date. If possible, OLS will provide a 10 working day advance notice. The notice will establish the date on which any written submissions and accompanying documents are due. Copies of all documents must be sent to all interested parties.
- J. Hearing procedures include the following:
  - 1. The hearing officer may, with proper notification, postpone or reschedule the hearing or the date written submissions are due.
  - 2. OLS will arrange for a court reporter for the hearing.

## **6.15 • PUBLIC HEARING**

**(Rev 11/99)**

When a hearing is to be held, the hearing officer presides. The following guidelines apply:

- A. The hearing is conducted as a fair hearing.
- B. Informal procedures are followed.
- C. No oath is given.
- D. Witnesses and participants are advised to be truthful, accurate, and to the point.
- E. Liberal rules of evidence apply.
- F. Comments must be relevant to the protest issues
- G. Statements are allowed from the interested parties, their witnesses, or authorized representatives.
- H. Cross-examination is permitted at the discretion of the hearing officer if it is deemed helpful to the resolution of protest issues.
- I. All interested parties are given the opportunity to present their positions.

## **6.18 • DECISION ON THE HEARING**

The hearing officer's decision is based on the record produced. The hearing officer must decide whether the protestant demonstrated that the allegations of the protest were true. The decision will recite the basis for the hearing officer's decision. DGS has no jurisdiction to consider any appeal to the hearing officer's decision.

## **6.19 • COSTS OF THE PROCEEDING**

- A. All the costs of the protest proceeding are charged to the state agency involved.
- B. DGS arranges for all hearings to be recorded by a hearing reporter. Any interested party may arrange with the reporter to have a transcript prepared at the party's cost.

## **6.30 • PROTESTS ON OTHER TYPES OF SOLICITATIONS**

- A. Protests about contracts for commodities, telecommunications, and EDP goods and services are made to the Board of Control.
- B. Protests about contracts for public works, grants, A&E services, repair maintenance of personal property, or any other type of solicitation not specifically covered by another statute may be heard by DGS if both parties agree to the jurisdiction.

## **6.35 • NOTIFICATION OF THE RIGHT TO PROTEST**

(Rev 3/97)

- A. Agencies should include information for protesting the award of contracts in all IFBs and RFPs. This should advise protestants that a detailed, written statement of protest, including IFB/RFP number, and the name of the state agency involved and the agency contract person, should be submitted to both of the following:
  - Department of General Services  
Office of Legal Services  
Attention: Protest Coordinator  
1325 J Street, Suite 1911  
Sacramento, CA 95814  
FAX: (916) 327-3916
  - The awarding agency
- B. Protests may be sent by regular mail, fax, courier or personal delivery. Protestants should include their fax numbers if they have one.

## **6.40 • MINIMIZING PROTEST EXPOSURE**

To minimize protest exposure and to enhance the likelihood of prevailing at a hearing, the agency should insure that:

1. All solicitation packages are prepared with the appropriate clauses, phrases, and documents, and each is in compliance with all statutory and policy requirements.
2. All solicitation packages are written with clear and easily understood instructions.
3. Evaluators are carefully instructed on the evaluation approach to be used.
4. Sound decisions are made when determining a bidder's responsiveness to IFB or RFP requirements.
5. All bidders are treated fairly and impartially.

6. All bidders are given access to identical information and facts about the bid documents, statement of work, and qualification requirements.
7. The waiver of immaterial defects in any one bid or proposal does not unduly prejudice other bids or proposals or affect the price.
8. Bidders are given timely and prompt access to all applicable IFB or RFP evaluation materials following the posting of a notice of intent to award.
9. All inquiring bidders are informed of the reasons their bids or proposals are deemed nonresponsive or are not selected for the award.



## 7. MISCELLANEOUS CONTRACTING ISSUES

### 7.00• INTRODUCTION

This chapter covers miscellaneous contracting issues that arise in various types of contracts.

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## 7.05• CIVIL SERVICE CONSIDERATIONS

(Rev 1/01))

A. Basic considerations are as follows:

1. Contracting for Personal Services, in lieu of using Civil Service personnel is permitted only if the standards outlined in GC §19130 (a) or (b) are met. See 2 and 3 below.
2. Section 19130(a) permits contracting for personal services to achieve cost savings. Any state agency proposing to execute a contract based on cost savings to the state as justification for not using civil service personnel, must first notify the State Personnel Board of its intention. (GC § 19130(a)).
3. Section 19130(b) permits contracting for personal services when any of the requirements of 19130(b) are met. **See also SPB Regulations 2 CCR § 547.60**
4. Departments or agencies submitting a proposed contract to DGS for approval must retain all data and information relevant to the contract and necessary for a specific application of the standards set forth in GC § 19130(a) in the event that the State Personnel Board's review is requested. For standards of review see PCC § 10337.
5. GC § 19130(c) requires that all persons who provide services to the state under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment. Therefore, state law and policy require that each state agency's contract for services with individuals be executed and administered in a manner consistent with the establishment of an independent contractor status when a civil service appointment is not intended. MM 95-18 provides the guidance necessary to make the required determination between employee status and independent contractor status. The management memo further requires a certification about employee status and independent contractor status for each individual engaged under contract.

B. Contracts awarded on the basis of GC § 19130(b) are subject to review at the request of an employee organization representing state employees. For standards of review see PCC § 10337.

C. Contracting out for services is permissible when any of the conditions set out in GC § 19130(b) can be met.

D. SPB regulations require agencies, when submitting contracts let under GC §19130(b) for DGS approval, to attach a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in GC. §19130 (b). (See [www.spb.ca.gov](http://www.spb.ca.gov)).

## 7.10 • CONFLICTS OF INTEREST

(Rev 10/97)

A. Current State Employees (PCC § 10410)

1. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency unless the employment, activity, or enterprise is required as a condition of regular state employment.

2. No officer or employee shall contract on that person's own behalf as an independent contractor with any state agency to provide goods or services.
- B. Former State Employees (PCC § 10411)
1. For the two-year period from the date of leaving state employment, no former state officer or employee may enter into a contract in which that person was engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
  2. For the twelve-month period from the date of leaving state employment, no former state officer or employee may enter into a contract with any state agency if that person was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to that person leaving state service. This does not apply to contracts with former employees as an expert witness, or continuation of attorney services the former employee was involved with prior to leaving state service.

## 7.15 • REPORTING OF CONTRACTING PRACTICES

(Rev 1/01)

Legislation requires contracting agencies to submit various reports on contracting practices, as follows:

- A. Fair Employment and Housing (Within Ten Days of Award Date)
1. Under 2 CCR § 8117.5, agencies awarding contracts are required to notify the Department of Fair Employment and Housing (DFEH), Office of Compliance Programs, of any contract awarded ~~for \$5,000 or more~~ **in excess of \$5,000**. Departments are required to submit one form STD 16 to the Office of Compliance Programs for each contract in excess of \$5,000 within ten days of the award date. Under some circumstances it may be possible to make other arrangements with DFEH.
- B. DVBE Report (Annually by January 14)
1. PCC § 10115 et. seq. requires state agencies to have overall annual participation goals of not less than three percent for disabled veteran business enterprises (DVBE).
  2. Previously, state law placed participation goals on each contract. However, as of January 1, 1993, the law was changed to apply the same goals to the overall dollar amount awarded by each state department. Agencies must report annually to the Governor and the Legislature the level of participation in contracts covering construction; purchases of materials, supplies, and equipment; professional services; and all contracts for a dollar amount of less than \$25,000. If an agency does not meet the annual goals, it must also report the reasons for the inability to achieve the goals and the remedial steps it plans to achieve the goals (SCM 8).
- C. Small Business Report (Annually on August 1)
1. The Small Business Procurement and Contract Act (SBPCA), GC § 14835, provides that a fair share of state purchases and contracts or subcontracts for property and services be placed with small business enterprises.

2. The evaluation and progress of this policy guideline is monitored through the annual reporting by all state departments on the Small Business Monitoring Report form STD 810, by August 1 of each year. These reports are filed with ~~DGS/OSBCR, 1531 I Street, Sacramento CA 95814~~ **DGS/PD-Business Management Section (for information regarding this report call (916) 445-1380).**
- D. Consultant Report (Annually by August 12)
1. PCC § 10359 requires state agencies to report their Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS. Departments are required to report their fiscal year contract data by August 12th of each year. The PCC also requires DGS to report to the Legislature a list of departments and agencies that have not submitted the required report.
  2. PCC § 10369 requires state agencies to prepare post evaluations on form STD 4 for all completed consulting services contracts of more than \$5,000 or more. Copies of negative evaluations must be sent to DGS/OLS. In addition, the Bureau of State Audits requires agencies annually to certify compliance with these requirements.

## 7.20 • PROMPT PAYMENT

(Rev 1/01)

- A. Prompt Payment Act and interest penalty fee. Under GC § 927 et. seq. state agencies which acquire property or services pursuant to a contract with a business must pay that business for each complete delivered item of property or services within 45 days from the date set forth in the contract or, if no payment date is specified in the contract, **submit a correct claim schedule to the SCO** within 30 calendar days after receipt of the undisputed invoice (~~payment by revolving fund~~). The state agency must ~~pay the business directly, if authorized to do so, or~~ forward the invoice for payment to the State Controller's Office (SCO) within 30 calendar days after receipt of the undisputed invoice. The SCO must pay the business within 15 days of receipt of the invoice from the state agency. The clock starts to run when an invoice is received by the department, not when it is received by the accounting office. The OLS will not approve any contracts with payment periods longer than 45 days (Mgt. Memo 99-11).

If payment is not made within the times specified above, an interest penalty fee at a rate of one percent above the Pooled Money Investment Account earning rate for the previous year must be paid. **For non-small businesses, the penalty is waived if the penalty is \$75.00 or less.** See GC § 927.6 and SAM § 8475.

- B. Small business prompt payment. Additional provisions apply for certified small businesses. See GC § 927.6(a) and SCM 8.

## 7.21 • INDEPENDENT CONTRACTORS

(Rev 1/01)

To ensure that state agencies properly classify individuals performing services, the Employment Development Department (EDD) has prepared a schedule of 20 common-law factors and three additional factors (for state employment tax purposes) to help state agencies distinguish between an independent contractor and an employee. Details **can be found on EDD's web site at [www.edd.ca.gov](http://www.edd.ca.gov)** ~~on requirements are addressed in MM 95-18 (IRS Code §§ 3121(d), 6651, 6656, and 6662).~~

## 7.25 • CONTRACTOR IDENTIFICATION NUMBERS

(Rev 10/98)

- A. Each contractor who enters into a contract with the state must provide a taxpayer identification number; i.e., the federal employer identification number or the Social Security Number that has been assigned to the contractor by the federal government. Each contractor must include the taxpayer identification number on all subsequent contracts with the state regardless of the contract amount.
- B. Contracting state agencies must obtain the taxpayer identification number from the contractor. The following documents must contain this information:
  - 1. ~~Vendor~~ **Payee** Data Record - STD 204, which is to be retained in the awarding agency's accounting or business services office (if applicable)
  - 2. State Contract Transmittal - STD 15 or STD 215
  - 3. Standard Agreement - STD 2 or STD 213
  - 4. Contract/Contractor Evaluation - STD 4
  - 5. Contract Award Report - STD 16
- C. The law requires that any agency requesting the disclosure of a social security number must advise the provider as follows:
  - 1. Whether disclosure is mandatory or voluntary
  - 2. By what statutory authority the number is solicited
  - 3. The intended use of the number

## 7.29 • EQUIPMENT PURCHASES

(Rev 10/97)

- A. When equipment is purchased or built with state funds as part of the contract the contract must clearly state that title to any equipment purchased or built with state funds will vest in the State. On termination of the contract, the State may:
  - 1. Request such equipment be returned to the state, with costs incurred by the contractor for such return being reimbursed by the state.
  - 2. Authorize the continued use of such equipment for work to be performed under a different agreement or contract.
- B. The state may, at its opinion, repair any damage or replace any lost or stolen items and deduct the cost thereof from the contractor's invoice to the state, or require the contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the state with no expense to the state. In the event of theft, a police report must be filed immediately. (Refer to SAM § 2625.)
- C. The contractor should maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of a contract. The inventory record of each piece of such equipment should include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 should be inventoried. A copy of the inventory record must be submitted to the state on request by the state. (See MM 95-22.)
- D. Procedures for the handling and accounting of equipment through contracts is the same as that for handling through regular state purchasing.

### 7.30 • CONTRACT BUDGETS

- A. If payment is on a cost reimbursement basis, the following items should be included and all unit rates must be extended and totaled (PCC § 10371[C]):
  - 1. Personal service costs showing individual or position rates per unit of time
  - 2. Fringe benefits costs citing actual benefits or a percentage of personal services costs
  - 3. Operating expenses including rent and supplies
  - 4. Equipment costs specifying equipment to be bought and the disposition of equipment at the end of the contract
  - 5. Travel expenses and per diem rates set at the rate specified by the Department of Personnel Administration for similar employees or verification supplied that such rates are not available to the contractor
  - 6. Overhead
  - 7. Other specific breakdown required
- B. A consultant services contract must contain the above items.
- C. If payment is based on a lump sum or fixed price for the total project, the contractor is paid for an agreed upon result.

### 7.31 • AVAILABILITY OF FUNDS

(Rev 3/97)

- A. If the contract funding spans more than one fiscal year's appropriation, the contractor should be advised in writing as follows:

This contract is valid and enforceable only if sufficient funds are made available by the Budget Act of the appropriate fiscal year for the purposes of this program. In addition, this contract is subject to any additional restriction, limitations or conditions enacted by the Legislature which may affect the provisions, terms, or funding of this contract in any manner.
- B. Services should be paid for out of the funding for the fiscal year during which they are rendered.

### 7.32 • ADVANCE PAYMENTS

Advance payments by the state are permitted only when specifically authorized by statute and should be made only when necessary. Contracts or agreements containing provisions for advance payments by the state should preferably provide for small periodic payments rather than the total contract price or lump-sum advances (GC §§ 11256 - 11263 and 11019).

### 7.33 • PROGRESS PAYMENTS

(Rev 3/97)

- A. A progress payment is a partial payment for a portion or segment of the work needed to complete a task.
- B. Not less than ten percent (10%) of the contract amount shall be withheld pending final completion of the contract. If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task. (PCC § 10346 and 10379).

Note: Separate and distinct tasks do not usually occur when the contract is for a finished project report or plan. To determine whether a particular task is separate and distinct you must decide if later tasks build on it. For example, if the contract requires the writing of a manual the completion of each chapter is not a separate and distinct task. The ten percent (10%) withhold should not be paid until the manual is completed satisfactorily.

- C. No state agency shall make progress payments on a contract unless it first has established procedures approved by DGS/OLS, to ensure that the work or services contracted are being delivered in accordance with the contract. (PCC §§ 10346 and 10379.
- D. Recommended policy for state agencies:
  - 1. Discourage progress payments whenever possible.
  - 2. Do not allow progress payments on contracts of less than three months.
  - 3. If progress payments are to be made, they should be made not more frequently than monthly in arrears or at clearly identifiable stages of progress, based upon written progress reports submitted with the contractor's invoices.
  - 4. Progress payments should be based on at least equivalent services rendered. (Hours worked should not be the sole basis for progress payments.)
  - 5. Progress payments shall not be made in advance of services rendered
  - 6. Contracts may require a withhold of ten percent (10%) of each progress payment pending satisfactory completion of the contract or a separate and distinct task.

Note: If the contract is competitively bid this term should be noted in the bid document.

- 7. Establish a procedure to indicate the amount to be withheld on invoices.
- 8. Establish a procedure to obtain the amounts withheld.

### **7.34 • PAYMENT BY STATE CREDIT CARD**

- A. Agencies may use credit cards (CAL-Card) for purchases subject to the following:
  - 1. Agency responsibilities:
    - a. Designate a contact person for the program.
    - b. Designate a contact person for the accounting functions.
    - c. Designate approving officials and decide who will receive card.
    - d. Establish card limits and purchase restrictions.
  - 2. Card vendor responsibilities:
    - a. Maintain a master file for each agency.
    - b. Maintain an account for each cardholder.
    - c. Send monthly statements to each cardholder, approving official, and agency or district accounting office.
- B. Cardholders may spend up to \$15,000 per purchase or order, depending on the dollar limits and types of business purchases designated by (and delegated to) the agency. The purchase limit must be within the agency's delegated purchasing authority as authorized by the Department of General Services, Procurement Division. (The card may not be used for airline tickets, ground transportation, vehicle rentals, restaurants, bars, or lodging.)

- C. The CAL-Card may be used to procure information technology (IT), commodities (non-IT), and purchase from the California Multiple Award Schedules (CMAS) provided the purchase is within the authorized CAL-Card dollar limit. If the CMAS does not indicate whether a CAL-Card is accepted, contact the CMAS unit for assistance at (916) 324-8045 or CALNET 454-8045.
- D. Questions may be directed to Statewide CAL-Card Program Administrator, Department of General Services, Procurement Division, 1823 14th Street, Sacramento, CA 95814; telephone (916) 322-5833 or CALNET 492-5833. Refer to DGS MM 95-01 or its successor for additional information.

## 7.40 • INSURANCE REQUIREMENTS

(Rev 11/99)

- A. Evidence of insurance shall meet the requirements specified in the contract and shall be of a form and content acceptable to DGS/ORIM and will be presented to DGS/OLS with the contract when it is submitted for approval. Insurance for hazardous activities shall meet the following requirements:
  - 1. The insurance must be issued by an insurance company acceptable to DGS/ORIM or be provided through partial or total self-insurance acceptable to DGS.

The certificate of insurance shall state a limit of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined.

Note: \$1,000,000 per occurrence is the minimum acceptable limit of insurance; higher limits should be required in cases of higher-than-usual risks.
  - 2. The certificate of insurance shall show that hazardous activities are protected through commercial general liability insurance. Additional insurance, such as automobile liability insurance, may be required if motor vehicles are used in the performance of the contract.
  - 3. The certificate of insurance shall meet such additional standards as may be determined by the contracting state agency, either independently or in consultation with DGS/ORIM, as necessary for protection of the state.
- B. Contracts for hazardous activities costing \$100 or more must be submitted to DGS/ORIM for approval (see SCM 3.12).
- C. Contracts for hazardous activities shall contain the following provisions:
  - 1. The contractor must furnish to the state a certificate of insurance stating that liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the contractor.
  - 2. The contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the time of this contract, the contractor agrees to provide, at least 30 days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract or for a period of not less than one year. New certificates of insurance are subject to the approval of DGS, and the contractor agrees that no work or services shall be performed prior to such approval. The state may, in addition to any other remedies it may have, terminate this contract on the occurrence of such event.



- D. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without 30 days prior written notice to the State; and
  2. The State of California, its officers, agents, employees, and servants are included as additional insured, but only with respect to work performed for the State of California under this contract.

Note: DGS/ORIM is available to provide additional consultation on all insurance and liability matters.

## **7.45 • CONTRACTS WITH NO DOLLAR AMOUNT**

In agreements in which only in kind services are used and in which the performance is other than monetary, the consideration must be valued on a monetary basis for the purpose of determining whether DGS/OLS approval is required

## **7.50 • AUDITS**

(Rev 11/99)

- A. Audit Requirement: All contracts for expenditure of public funds in excess of \$10,000 must contain a clause stating that the contract is subject to audit by the State Auditor (GC § 8546.7). All contracts containing participation goals (usually not in contracts under \$10,000) as discussed in SCM 8 must contain an audit clause (CCR § 1896.75). Also, federally funded contracts are often subject to audit in accordance with federal regulations. In addition, the awarding agency has the general responsibility for determining compliance with the terms and conditions of its contracts and may have need of contractual audit authority.
- B. Records Keeping and Retention: To facilitate being able to conduct an audit, if needed, the contractor must agree to maintain the records involved with the performance of the contract and to make those records reasonably available for audit. The minimum period of time for retention of contract records is three years after final payment of the contract (GC § 8546.7). In the event of a contract performance or payment dispute, this minimum is extended until the dispute is resolved. The awarding agency should not impose a longer records retention requirement or more detailed record keeping requirements unless there is a specific need to do so. If there is a need for longer retention or more detailed records, a clause covering these subjects should be tailored for the contract in a fashion that does not conflict with the clauses below.
- C. Contract Audit and General Records Keeping Clause: The following clause meets the above requirements and must be included in all contracts of \$10,000 or more regardless of the form of contract used. This clause should be sufficient to meet most state and federal needs. If your agency has a need for a different standard audit clause, the clause should be submitted to DGS/OLS for review with an explanation as to the necessity of the differences.

“Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

Contractor shall comply with the above and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC § 10115.10.”

## **7.55 • DRUG-FREE WORKPLACE ACT OF 1990**

(Rev 11/99)

A. The Drug-Free Workplace Act of 1990 (GC § 8350 et seq.) requires state contractors and grantees to certify that they will provide a drug-free workplace. Contractors and grantees may satisfy this requirement in one of the following ways:

1. Use the Drug-Free Workplace Certification form, STD 21. This form may be in effect for the duration of the contract or for a period up to 36 months as provided for below, or
2. In lieu of the STD 21, use the following standard language in bid forms and contracts:

### **Drug-Free Workplace Certification**

By signing this contract, the contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
  - The dangers of drug abuse in the workplace;
  - The person's or organization's policy of maintaining a drug-free workplace;
  - Any available counseling, rehabilitation, and employee assistance programs; and
  - Penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed contract will:
  - Receive a copy of the company's drug-free workplace policy statement; and
  - Agree to abide by the terms of the company's statement as a condition of employment on the contract.

3. A purchase or sub-purchase order is a contract subject to the certification requirements of the Drug-Free Workplace Act of 1990. To comply with these requirements, state agencies purchasing commodities using purchase or sub-purchase orders may allow a contractor or grantee (vendor) to file a STD 21 to be in effect for 36 months from the date executed. State agencies may issue a STD 21 for a period up to 36 months in lieu of requiring a STD 21 for each individual state purchase.

If the vendor elects to have the STD 21 on file as provided above, the terms and conditions of the STD 21 shall have the same force, meaning, effect and enforceability as if a certification were separately, specifically, and individually provided for each purchase or grant between the vendor and this state agency.

- B. Any contract or grant may be subject to suspension of payments or termination, or both, and the contractor or grantee may be subject to debarment if the contracting or granting agency determines that:
  1. The contractor or grantee made a false certification, or
  2. The contractor or grantee violates the certification by failing to carry out its requirements.
- C. The Drug-Free Workplace Act shall not be construed to require any contractor or grantee to ensure that other businesses with which it subcontracts also provide drug-free workplaces.

## **7.60 • RENTAL AGREEMENTS**

- A. Unless it has specific statutory authority, a state agency cannot agree to:
  1. Indemnify a contractor;
  2. Assume responsibility for matters beyond its control;
  3. Agree to make payments in advance;
  4. Accept any other provision creating a contingent liability against the state; or
  5. Agree to obtain insurance to protect the contractor.
- B. The contract must clearly provide that the state does not have responsibility for loss or damage to the rented equipment arising from causes beyond the control of the state. Any provision obligating the state to return the equipment in good condition, subject to reasonable wear and tear, also must except or exclude loss or damage arising from causes beyond the control of the state. The contract must clearly restrict the state's responsibility for repairs and liability for damage or loss to that made necessary by or resulting from the negligent act or omission of the state or its officers, employees, or agents.
- C. If the state does not elect to maintain the equipment, the contract will place the obligation on the contractor, as lessor, to keep the equipment in good working order and to make all necessary repairs and adjustments without qualification, with a clear right in the state to terminate or cease paying rent should the contractor fail to maintain the equipment properly. For this purpose, the contractor's representatives shall be given full and adequate access to the equipment at reasonable times.
- D. Personal property taxes are not generally reimbursed when leasing equipment. See SAM § 8736.

- E. For the purpose of determining whether contracts containing renewal options are subject to the approval of DGS, the total cost and term of the rental shall be computed by including the cost and term of all renewal options included in the contract.

## **7.61 • PURCHASE OPTIONS**

(Rev 10/98)

- A. To avoid paying hidden interest and carrying charges, the state agency should consider purchasing the equipment outright rather than entering into an “installment purchase” or “rental agreement with option to purchase.” Funding problems should be discussed with DOF budget staff.
- B. Approval by DGS of the rental agreement does not include approval for the exercise of the option to purchase. Any exercise of the option and purchase of the equipment must be processed through DGS, Procurement Division, in accordance with the procedures set forth in SAM § 3500, et seq.
- C. Agencies shall not circumvent state purchasing policies through use of contracts containing options to purchase.
- D. Whether an equipment rental transaction which includes an option to purchase should be processed in accordance with the SCM or should be processed in accordance with the “Purchases” chapter of SAM (§ 3500 et seq.) is dependent upon the acquisition of title to the equipment.
  - 1. If the contract provides for automatic transfer of title to the state upon completion of the so-called “rental” payments, or upon payment of a nominal consideration after completion of such “rental” payment, the transaction would be more in the nature of a “conditional sale” or “installment purchase” rather than a “rental of equipment” and should be processed in accordance with SAM § 3500 et seq.
  - 2. If the rental payments will be the same whether or not the lessor’s offered option to purchase is included in the rental agreement, and the state agency includes the option as an unobjectionable and possibly desirable feature, the contract may be processed in accordance with the SCM.

## **7.62 • LEASE/PURCHASE ANALYSIS FOR EQUIPMENT**

- A. A lease/purchase analysis shall be prepared (See SAM § 3700) for each contract to lease equipment where the contract exceeds \$1,000 or the duration of the lease exceeds three months. This requirement does not apply to contracts for equipment rented in accordance with PCC Section 10108, from other state agencies, or equipment obtained under a Master Rental Agreement.
- B. A Lease/Purchase Analysis is required as follows:
  - 1. Dollar amount exceeds \$1,000 or the duration of the lease exceeds three months. A copy of the analysis and the contract or amendment shall be retained by the agency.
  - 2. Submit a copy of the analysis with the contract or amendment to DGS/OLS for approval when approval is required based on the agency’s delegated approval amount.
- C. If the lease/purchase analysis indicates that it is more economical to purchase, it will be necessary to include a justification explaining how it is in the state’s best interest that the equipment be leased. A lease/purchase analysis based on a “zero” salvage value of the equipment will normally be acceptable only when mechanical useful life and program useful life are the same. When bids are obtained, prices for both leasing and purchasing will be secured to facilitate the making of the analysis.

- D. The director of the requesting department should give prior concurrence to proposals in which the lease/purchase analysis indicates purchase but the requesting unit proposes to lease.

## **7.65 • NONDISCRIMINATION PROGRAM**

(Rev 10/98)

- A. All employers who are, or wish to become, contractors with the State must develop and implement a nondiscrimination program as defined in Title 2, CCR Section 8104; unless specifically exempted pursuant to Title 2, CCR Section 8115, which includes contracts under \$5,000 and contracts with licensed Community Based Rehabilitation Program (CRP). See Government Code Sections 12935(a) and 12990(d); and Title 2, CCR Section 8103.
- B. A contractor shall include the nondiscrimination clause in its contracts and with all subcontracts to perform work under the contract, either directly or by incorporation by reference. Any such incorporation by reference shall be specific and prominent. See Title 2, CCR Section 8103; and Government Code Sections 12935(a) and 12990(d).
- C. If there is no statement of compliance with the bid or proposal, the bid is unresponsive.
- D. Nondiscrimination Certification - Any bid, proposal, or offer for a contract which is submitted by a contractor who has been decertified from contracting with the State by DFEH, shall be deemed to be nonresponsive and shall be rejected. Refer to the California Notice Register for a list of decertified contractors. (Published by the Office of Administrative Law and available through the Office of State Printing.)

## **7.70 • RECYCLE PRODUCT CONTENT**

(Rev 1/01)

- A. Effective September 1, 1999, per administrative policy, the following service contracts must contain language requiring the use of recycled products.
  - 1. Janitorial contracts must contain terms requiring the use of janitorial supplies containing recycled paper products only.
  - 2. Printing contracts must contain terms requiring recycled paper only, unless the proposed printing job cannot be done on recycled paper.
  - 3. Contracts involving parts cleaning must contain terms requiring the use of recycled solvents.

Contracts included in the above categories, subject to DGS-OLS approval, must contain the required terms or they will not be approved.

- B. In addition, the contractor must agree to certify in writing, upon completion of performance under the agreement, the minimum percentage, or the exact percentage of post-consumer and secondary materials provided, or used in the services provided under the agreement. (PCC §§ 12205 ~~12161, 12200~~) This certification must be under penalty of perjury.

## 7.75 • SPECIALIZED CONTRACT PROVISIONS

(Rev 10/98)

### A. Office Machine Repair

1. Individual Agency Office Machine Maintenance Contracts.  
Policies with regard to repair and maintenance of office machines including microcomputers, peripherals, and facsimile (fax) machines are specified starting at SAM § 2120. In various areas of the state, repair, and maintenance of specified office machines are performed by DGS. See SAM § 2120. When an agency cannot obtain services from DGS, it will be authorized in writing to utilize the services of outside vendors, subject to the general policies on repair and maintenance.
2. Authorized Service Representative.  
If service is not available through DGS, Procurement Division, office machines should be serviced by the authorized service representative of each manufacturer.

### B. Commercial Office Moving Services

Contracts exceeding \$2,500 with a carrier for commercial office moving services must conform to the requirements contained in SAM § 3810 which provide for such contracts to be with a carrier whose drivers and supporting personnel are operating under current collective bargaining agreements or who are maintaining the prevailing wages, standards, and conditions of employment for its driver and supporting personnel. See Government Code Section 14920. Agencies must include such requirements in Invitations for Bids and contracts.

### C. Pest Control and Fumigation Contracts

Pest control and fumigation contracts must contain the insurance provisions found in SCM 7.40.

### D. Elevator Maintenance Contracts

Contracts for elevator maintenance shall include the following provision:

Commencement and termination of contract:

The service to be performed under this contract shall begin on the date specified and continue for a period of five years. The State may terminate this contract at any time by giving the contractor at least thirty (30) days written notice of its intention to do so.

## 7.80 • MULTIPLE YEAR CONTRACTS

(Rev 1/01)

### A. Contracts for services should normally not exceed one year, absent a substantial written justification for a longer term, based on business reasons.

In those instances where there is a justifiable business reason for a contract to exceed one year DGS/OLS recommends that an agency bid the contract for one year, with any additional time bid as an option to renew. Approval by DGS/OLS must be obtained prior to releasing any solicitation that contains options to renew for additional years. Prior approval for multiple year contracts is not required for:

1. Contracts not subject to OLS review;
2. Use of, or subscription to, Master Service Agreements (MSA);

3. Interagency Agreements (I/A), or
4. Contracts of a type covered by SAM 1233.

Agencies who wish to get prior approval from OLS should contact the attorney assigned to their department on how to proceed. Failure to obtain prior approval from DGS/OLS may be cause for non-approval of the contract

If the additional time is considered in the method for selecting the contractor an agency will not need to get a sole source exemption when amending the contract to exceed one year so long as all terms, conditions, and costs are those evaluated in the bidding procedure.

- B. Unless an agency has either statutory authority or a written exemption each contract service should be re-bid after a total of thirty-six (36) months consecutive with the same contractor.
- C. For services such as fiscal audit or quality audit, it is desirable to obtain a different contractor after three years.

## **7.85 • CONTRACT TERMINATION CLAUSES**

- A. Agencies should carefully consider the types of termination clauses to be used in each contract.
  1. **TERMINATION FOR CAUSE.** The preprinted language on the Std. Form or STD 213, and the General Terms and Conditions available on the internet at ([www.dgs.ca.gov/contracts](http://www.dgs.ca.gov/contracts)) are satisfactory for a termination for cause. Agencies should not change or modify this language due to the possibility of accidentally changing a legal requirement.
  2. **TERMINATION WITHOUT CAUSE.** It is recommended that contracts contain a termination clause to allow the state to terminate the contract, without cause, with advance written notice provided to the contractor. Whether or not to provide the same right to the contractor (mutual termination), must be given careful consideration in that considerable effort may have been expended in establishing the contract. It is not recommended that mutual termination, without cause, be included in the contract.

## 8. BUSINESS PARTICIPATION PROGRAM REQUIREMENTS

### 8.00 • INTRODUCTION

(Rev 1/01)

This chapter discusses programs established to encourage participation in state contracting by various segments of the business community. One or more of these programs may be involved in a specific contracting opportunity. Agency staff involved with contract preparation should be familiar with these programs such that they can explain the program and contracting agency discretion decisions to bidders. Questions about these programs should be addressed to:

~~The Office of Small Business Certification and Resources (OSBCR)~~

~~1531 I Street, Second Floor, IMS Code C-17~~

~~Sacramento, CA 95814-2016~~

~~Telephone for ads: (916) 322-5060~~

~~Receptionist (916) 323-5478~~

~~FAX (916) 442-7855~~

~~Internet Addresses: <http://www.dgs.ca.gov> and <http://www.dgs.ca.gov/osmb>~~

**The Department of General Services, Procurement Division (See Table 8.1)**

**Internet Address: [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd)**

**Offices listed in Table 8.1 can be contacted from through the Procurement Division web site.**

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(Rev 1/01)

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## 8.02 • OSBCR PROCUREMENT DIVISION RESPONSIBILITY AND LEGAL REFERENCES

(Rev 1/01)

Note: ~~Effective September 1, 1998, the Office of Small and Minority Business, (OSMB), changed their name to the Office of Small Business Certification and Resources (OSBCR)~~

**Effective July 1, 2000 the OSBCR became part of the DGS Procurement Division (PD). OSBCR retained its name within PD, and narrowed its focus to Small Business and DVBE certification. Other programs previously administered by the OSBCR merged with existing programs within the PD. See Table 8.1 for information.**

Table 8.1 indicates OSBCR's responsibilities for various programs.

Table 8.1

<b><u>Disabled Veteran Business Enterprise (DVBE) Participation Program</u></b>		
<b>Function or Service</b>	<b>Office/Unit</b>	<b>Authority</b>
Act as a resource. Disseminate policies and procedures. .	<b><u>Small Business Opportunity Program Unit</u></b> <b><u>(916) 445-5269</u></b>	<i>PCC § 10115 et seq.; 2 CCR §§ 1896.60 - 1896.67; 2 CCR §§ 1896.90 - 1896.98. <b><u>Military and Veterans Code § 999.7.</u></b></i>
Coordinate reporting	<b><u>Business Management Section</u></b> <b><u>(916) 445-1380</u></b>	<i>PCC § 10115 et seq.; 2 CCR §§ 1896.60 - 1896.67; 2 CCR §§ 1896.90 - 1896.98.</i>
Report Compliance Violations	<b><u>Protest and Dispute Resolution Unit</u></b> <b><u>(916) 323-1468</u></b>	<i>2 CCR §§ 1896.60 - 1896.67; 2 CCR §§ 1896.90 - 1896.98.</i>
Certification	<b><u>Office of Small Business Certification and Resources (OSBCR)</u></b> <b><u>(916) 323-5478</u></b>	<i>California Military and Veterans Code § 999 et. seq. PCC §10115 et seq.; 2 CCR §§1896.60 -1896.67; 2 CCR §§1896.90 - 1896.98.</i>
<b><u>Review and approve DVBE Utilization Plans</u></b>	<b><u>Protest and Dispute Resolution Unit</u></b> <b><u>(916) 323-1468</u></b>	<b><u>PCC § 10115.15</u></b>

<b><u>Small Business Program</u></b>		
<b>Function or Service</b>	<b>Office/Unit</b>	<b>Authority</b>
Administer the five percent Small Business Preference <b><u>Small Business issues and questions; Outreach Program</u></b>	<b><u>Small Business Opportunity Program Unit</u></b> <b><u>(916) 445-5269</u></b>	GC § 14835 et seq.; 2 CCR § 1896 et seq.
<b><u>Certification</u></b>	<b><u>Office of Small Business Certification and Resources (OSBCR)</u></b> <b><u>(916) 323-5478</u></b>	<b><u>GC § 14835 et seq;</u></b> <b><u>2 CCR § 1896 et seq.</u></b>
<b><u>Ensure Prompt Payment to Small Businesses</u></b>	<b><u>PD, Acquisition Quality Assurance Program</u></b> <b><u>(916) 323-0802</u></b>	<b><u>GC § 927 et seq.</u></b>
<b><u>Small Business Advocate Program</u></b>	<b><u>Small Business Opportunity Program Unit</u></b> <b><u>(916) 445-5269</u></b>	<b><u>GC §§ 14835, 14847</u></b>
<b>Target Area Contract Preference Act (TACPA)</b>		
<b>Function or Service</b>	<b>Office/Unit</b>	<b>Authority</b>
Administer the program and serve as a resource.	<b><u>Protest and Dispute Resolution Unit</u></b> <b><u>(916) 323-1468</u></b>	GC § 4530 et seq.; 2 CCR §§ 1896.30 - 1896.41
<b>Enterprise Zone Act (EZA)</b>		
<b>Function or Service</b>	<b>Office/Unit</b>	<b>Authority</b>
Administer the program and serve as a resource	<b><u>Protest and Dispute Resolution Unit</u></b> <b><u>(916) 323-1468</u></b>	GC § 7080 et seq.
<b>Local Agency Military Base Recovery Area Act (LAMBRA)</b>		
<b>Function or Service</b>	<b>Office/Unit</b>	<b>Authority</b>
Administer the program and serve as a resource	<b><u>Protest and Dispute Resolution Unit</u></b> <b><u>(916) 323-1468</u></b>	GC § 7118

## 8.10 • INTRODUCTION TO DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION PROGRAM (DVBE) (Rev 1/01)

California establishes statewide DVBE participation goals by statute based on an awarding agency's overall contract dollars awarded as follows:

	<u>At Least:</u>
Disabled Veteran Business Enterprises (DVBE)	3%

An agency has the discretion to apply these goals to a specific contract, but is expected to meet the goals for the total of its contracting each year. State agencies must report annually the level of participation achieved. Should full participation not be attained, agencies must explain why and identify efforts planned to achieve the goals in the future. **See SCM 8.17 for additional reporting information.**

## 8.11 • DVBE REGULATIONS (Rev 3/98)

The law requires each agency to adopt regulations to implement the program. However, to avoid duplication of effort, agencies have the option to adopt the regulations developed by DGS. The summarized policies and procedures presented in this chapter are based on those regulations. If agency personnel have questions or issues to be resolved, they should refer to their agency's regulations or to the DGS regulations as applicable.

## 8.12 • WHEN TO APPLY DVBE GOALS TO A CONTRACT (Rev 1/01))

- A. Agencies should develop a plan or strategy to ensure goal achievement for their overall departmental contract program.
1. **Unless statutorily exempt**, all contracts, regardless of amount, are subject to the DVBE requirement. Agencies may waive the requirement for an individual contract however, agencies are still expected to meet their overall goal attainment at the end of each year. When an agency decides to waive the DVBE requirement, this must be noted in the solicitation.
  2. Awarding agencies have sole discretion to exempt contracts from the DVBE Participation Program requirements. In reviewing contracts, the Department of General Services will rely on the awarding agency's decision to exempt contracts.
  3. State agencies that enter into joint powers agreements shall ensure that those statewide participation goals become a part of the agreement and apply to any contracts executed by the joint powers agency (see GC § 6522).
  4. **Contracts with government agencies, colleges, universities, and JPAs are exempt from the DVBE Participation requirements.**
  5. **Standard contract language for DVBE participation requirements can be found at the web site: [www.osmb.dgs.ca.gov/dvbepp/program.htm](http://www.osmb.dgs.ca.gov/dvbepp/program.htm)**

## 8.13 • BIDDERS' RESPONSE TO DVBE REQUIREMENTS IN A SOLICITATION

(Rev 1/01)

### **A.** General Options

When the DVBE participation requirements have been included in the IFB or RFP, there are three basic ways for bidders to meet the requirements for ~~each~~ **this** program (SCM 8.10):

1. Achieve the minimum DVBE participation goals.
2. Make and document a "good faith effort" to achieve participation.
3. Submit and have approved a DVBE Utilization Plan. Utilization Plans are administered by DGS Procurement Division **Protest and Dispute Resolution Unit** and apply to ~~commodity and EDP/Telecommunications service contracts~~ **for goods and information technology**.

#### 8.13.1

### **B.** Meeting Goals

There are two methods of meeting the goals. If a bidder is a:

1. Non-DVBE: Commit to use DVBEs for not less than three percent of the dollar amount of the bid ~~response~~, or
2. DVBE: Committed to perform not less than three percent **of the dollar amount of the bid** with its own forces or in combination with other DVBEs.

Note: A department may require greater or lesser (even zero) goals on an individual contract, so long as this decision is reflected in the IFB/RFP. If the goals are included in the IFB/RFP, they apply to all bidders and they may not be waived after the bids/proposals are received.

#### 8.13.2

### **C.** Making A Good Faith Effort

The five legally defined "good faith effort" steps and applicable processes are:

1. Contact was made with the awarding agency to identify DVBEs. The contact purpose is to identify potential DVBE subcontractors and/or suppliers, not merely to request the bid package. Awarding agency responses may include **but are not limited to** the following:
  - a. A list of DVBEs who have expressed interest in the contract by phone, writing, or bid conference attendance.
  - b. A list of DVBEs who have participated, considered, or represented interest for prior contracts.
  - c. Use of an internal database or directory.
  - d. Referral to other resource or service providers. Including **the PD web site: [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd)**
2. Contact was made with other state and federal agencies, and with local DVBE ~~Subcontractors and/or Suppliers~~ **organizations to identify DVBEs**. The contact purpose is to identify potential DVBE subcontractors and/or suppliers. Agency responses may include **but are not limited to** the following:
  - a. Use of an internal database or directory.
  - b. Notices on bulletin boards or in newsletters.
  - c. Sharing of association.
  - d. Referral to other resources or service providers.

It has become increasingly difficult to maintain federal agency contacts to meet the requirements of the good faith effort. DGS/OLS has determined that nonprofit entities do not meet the definition of "federal agency" regarding program applicability and based on a reasonable interpretation of the plain words. In light of the OLS opinion and the unavailability of qualifying federal agencies the requirement to contact a federal agency becomes a practical impossibility and probably a legal nullity. (Civil Code § 3531 provides that "the law never requires impossibilities." Civil Code § 3532 states that "the law neither does nor requires idle acts.")

The suggested resolution is that awarding departments may omit the federal contact requirement in bid documents while no federal agencies exist as DVBE resources, or if a federal agency is identified, an awarding department may include the agency name and contact number, as supplied by OSBCR. State agencies are responsible to clarify this point in their bid packages. State agencies are also responsible to check the OSBCR Internet home page to ascertain the federal agency availability status prior to a bid package release. Additionally, vendors should be cautioned to pay close attention to bid package instructions regarding this issue and any possible changes.

Note: Awarding agencies need to be clear in their bid packages if they accept MBDC and SBDC contacts as both federal and local contact (counted twice) or if they must choose one or the other (counted once).

**Currently, a federal contact is available that allows for compliance with the Step 2 requirement of the good faith effort. The Small Business Administration (SBA) provides an electronic search engine, containing business profiles on nearly 200,000 businesses, including certified and non-certified disabled veteran owned businesses. The electronic search engine, PRO-Net, may be accessed at <http://pronet.sba.gov>**

**Agencies should be careful to verify that firms identified on PRO-Net are State of California certified DVBEs. Qualifying, non-certified DVBE firms should be encouraged to seek certification.**

**The SBA requests Internet contact only. A list of potential firms downloaded from PRO-Net will verify that the bidder made contact with the SBA.**

3. Advertisements were published in trade papers and papers focusing on DVBEs, unless time limits imposed by the awarding agency did not permit that advertising. This is the only good-faith-effort step **that state agencies have discretion to waive** with agency discretion. Specific advertising requirements are noted in SCM 8.13.3. **8.13.D.**
4. Invitations to bid **Solicitations** were submitted to potential ~~contractors~~. **subcontractors identified in steps 1-3.** ~~Invitations~~ **Solicitations** must be specific so that a bid reply may be made. ~~Invitations~~ **Solicitations** must also be equal. For example, if bonding assistance is offered to one potential subcontractor, it must be offered to all.

5. Available DVBEs were considered. The bidder must apply the same information and evaluation criteria in considering all responding subcontractors for a specified service. Subcontractors that are selected should be identified according to solicitation ~~package~~ requirements. Each selected subcontractor must contribute to the fulfillment of the contract by performing a commercially useful function. If the bidder decides not to select a potential subcontractor, the business reasons for non-selection must be documented and submitted in its bid to the awarding agency.

## 8.13.3

**D.** Program Compliance Clarification**A.****1.** Advertising

- a. Bidders must publish advertisements in trade and focus publications at least 14 calendar days before the date the ~~solicitation response~~ bid or proposal is due, unless a different time frame is specified in the ~~bid package~~ solicitation.
- b. Typically, advertisements should be specific enough to encourage responses from potential DVBE subcontractors and suppliers and include information such as the following:
  - Identify the awarding department.
  - Identify the ~~bid package~~ solicitation.
  - State the bid opening date.
  - Identify the type of work available for subcontracts or the supplies needed.
  - Request bids or quotes from DVBE subcontractors or suppliers.
  - Specify the geographical area and location in which the work will take place.
  - Identify the focus group or groups needed for participation.

**2.** Trade Paper:

A paper meeting all the following criteria qualifies as a trade paper:

- a. Has a business orientation relating to the trade or industry for which the advertisement is being placed;
- b. Is known and used by the members of the trade or industry;
- c. Primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at the trade or industry; and
- d. Is available within the geographic area for which the advertisement is placed and in which the services are to be performed.

**3.** Focus Paper.

A paper focusing on disabled veteran business enterprises that meets all the following criteria qualifies as a focus paper:

- a. Has an orientation relating to disabled veteran business enterprises;
- b. Is known and used by the members of the disabled veteran business enterprise community;
- c. Primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at disabled veteran business enterprises; and
- d. Is available within the geographic area for which the advertisement is placed and in which the services are to be performed.

Note: Typically, advertisements in at least one trade paper and at least one DVBE focus paper are required. However, the awarding agency has discretion to modify these requirements provided the specific requirements are clearly explained in the ~~bid package~~ **solicitation**.

B. **E.** Resource Packet

OSBCR **DGS Procurement Division** maintains the Resource Packet which **that** is useful in attaining program compliance. The Resource Packet provides listings of referral organizations (state, federal, and local), trade papers, and focus papers which **that** may be used to identify potential subcontractors and suppliers.

Note: The solicitation document must contain one of the following:

1. OSBCR **Procurement Division** Resource Packet for trade and focus publications,
2. A list of trade and focus publications specific to the business of the awarding department, or
3. The following paragraph:  
 "In accordance with PCC § 10115.2(b)(3), bidders must advertise in trade and focus publications unless all DVBE goals are satisfied. OSBCR **The Procurement Division** publishes a list of trade and focus publications to assist bidders in meeting these contract requirements. To obtain this list, please contact **the Procurement Division** OSBCR and request the "Resource Packet". OSBCR **The Procurement Division** may be contacted at: (awarding agency to list current address and telephone number of OSBCR **PD**)."

## 8.14 • QUALIFYING AS A DVBE

(Rev 10/98)

A. Disabled Veteran Business Enterprise

1. Disabled Veteran: A veteran of the U.S. military, naval, or air service, with a service-connected disability of ten percent or more, and is a resident of California.
2. Disabled Veteran Business Enterprise: A business concern certified by OSBCR as meeting all of the following requirements:
  - a. It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.
  - b. The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.
  - c. It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

Note: The State Treasurer's Office certifies DVBEs for contracts for professional bond services.

B. Control

As applied to “ownership (or management) and control” of DVBE means the DVBE owner(s) and or DVBE manager(s) must demonstrate expertise specifically in the firm’s field of operation in controlling the overall destiny and the day-to-day operations of the firm. Office management, clerical, or other experience unrelated to the firm’s field of operations is not sufficient to establish control. The control is comprised of two parts: Managerial and Operational. For more detail see 2 CCR § 1896.61(f).

C. Certification

DVBEs are required to be formally certified by OSBCR. DVBEs are asked to include a copy of their OSBCR certification letter.

Note: By regulation, DVBEs have until 5:00 p.m. on the bid opening day to submit a complete certification application. If they are certified they would have DVBE Participation Program eligibility. In this instance, the firm would not have a copy of their OSBCR certification letter and should indicate their certification is pending. Verification can then be made by the agency with OSBCR.

## 8.15 • DVBE BID INFORMATION

(Rev 1/01)

- A. Once the decision has been made to include the DVBE participation requirements in the contract, detailed DVBE specifications must be included in the IFB/RFP. Most agencies have developed standard DVBE specifications. ~~packages~~. If an agency does not have such ~~specifications a package~~ or if there is any question about the sufficiency of the ~~specifications package~~ used by the agency, the agency should consult with ~~OSBCR~~ **Procurement**.
- B. In evaluating the program compliance by the bidder, the awarding agency must require written evidence of completion of steps 1 through 5 of the good faith effort (SCM 8-13-2), including evidence of advertising, unless waived by the awarding department.
- C. Based on the evaluation, the awarding agency, in its sole discretion, may find that the bidder has complied with the program requirements. If a bidder fails to meet the participation program requirements, the bidder must be deemed non-responsive for purposes of an awarding agency’s evaluation and is not eligible for the contract award.

Note: A common mistake bidders make is to state that no subcontractors are needed and that goals are not applicable, offering that all the work can be done by the bidder with its own resources. Bidders should be warned that this is not an option if their bid is to be deemed responsive.

## 8.16 • MANAGEMENT OF DVBE CONTRACT REQUIREMENTS

(Rev 1/01))

A. Compliance

1. The awarding agency shall establish a method of monitoring adherence to the goals. Examples of monitoring methods include:
  - a. Random verification of contacts made, either for federal, state or local organization contacts, or for DVBE solicitations or bid consideration.



- b. Review of multiple bids submitted by the same vendor to verify independent effort and documentation. Evidence of insincere efforts may include:
    - Repeating unsuccessful contacts rather than trying a new contact.
    - Use of contacts that are out of business.
    - Business solicitations not relevant to the contract.
    - Copying of identical DVBE documentation packages.
  - c. Review of job related bid evaluation criteria and how it was applied to subcontractor/supplier bids.
  - d. Contacting DVBEs listed for participation upon award of contract.
  - e. Post award audits.
2. Awarding agencies **must** report program violations as follows to **The Procurement Division Protest and Resolution Unit, OSBCR**. ~~OSBCR~~ **PD** subsequently forwards the allegations to the Attorney General for possible action. It is unlawful for a person or firm to:
- a. Knowingly and with intent to defraud, fraudulently obtain or retain, certification as a DVBE.
  - b. Willfully and knowingly make a false statement with the intent to defraud, to influence certification of any entity as a DVBE.
  - c. Willfully and knowingly obstruct an investigation regarding DVBE certification.
  - d. Knowingly and with intent to defraud, obtaining or attempting to obtain public moneys to which the person is not entitled under the DVBE Participation Program.
  - e. Establish or cooperate in the establishment of, or exercise control over, a firm found to have violated the above. Violators are guilty of a misdemeanor and may also be liable for a civil penalty. Additionally, violators shall be suspended from bidding on, or participating as either a contractor, subcontractor, or supplier in any state contract or project.

Prior to reporting an alleged violation of PCC § 10115.10 to DGS, ~~OSBCR~~, **Protest and Dispute Resolution Unit**, awarding agencies must investigate the alleged violation and must prepare a written report of their findings. The written report must also include a recommendation for action to be taken commensurate with the awarding agency's findings and must be submitted to OSBCR **the Protest and Dispute Resolution Unit** within 60 days of notification to the awarding agency of the alleged violation.

- f. For contracts with DVBE goals, agencies should include the following language to assist in verifying compliance:**  
**“Contractor agrees to provide verification, in a form agreed to by the state, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of award of contract, or with any subsequent amendment.”**

#### B. Substitution Of Subcontractors

- 1. After award of a contract, the successful bidder/contractor must use the DVBE subcontractors and/or suppliers proposed in the ~~solicitation response~~ **bid or proposal** to the state unless a substitution is requested. The bidder/contractor must request the substitution in writing to the awarding agency and the awarding agency must approve the substitution in writing prior to commencement of any work by the **proposed** subcontractor/supplier. At a minimum, the substitution must include:

- ~~a. A written explanation of the reason for the substitution. and if applicable, the contractor must also include the reason a non-DVBE subcontractor is proposed for use.~~
    - ~~b. A written description of the business enterprise to be substituted, including its business status as a sole proprietorship, partnership, corporation or other entity, and the DVBE certification status of the firm.~~
    - c. If applicable, the contractor must also include the reason a non-DVBE subcontractor is proposed for use.**
    - ~~c-d.~~
  - d.** A written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall contract that the substituted firm **substitution business** will perform.
2. The request for substitution of DVBE and the awarding agency's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (PCC §§ 4100 et seq.) or any other contract requirements relating to substitution of subcontractors.
3. The awarding agency may consent to the substitution of another person **or business** as a subcontractor in any of the following situations:
  - a. When the subcontractor listed in the bid, after having a reasonable opportunity to do so, fails or refuses to execute a written contract, when that written contract based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.
  - b. When the listed subcontractor becomes bankrupt or insolvent, or goes out of business.
  - c. When the listed subcontractor fails or refuses to perform his/her subcontract.
  - d. When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor.
  - e. When the prime contractor demonstrated to the awarding agency, or its duly authorized officer, that the name of the subcontractor was listed as a result of an inadvertent clerical error.
  - f. When the listed subcontractor is not licensed pursuant to any applicable licensing requirement of any regulatory agency of the State of California.
  - g. When the awarding agency, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the process of the work.
4. Prior to the approval of the prime contractor's request for substitution, the awarding agency, or its duly authorized officer, must give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor.
5. The listed subcontractor who has been so notified will have five working days within which to submit written objections to the substitution of the awarding authority. Failure to file these written objections will constitute the listed subcontractor's consent to the substitution.

6. If written objections are filed, the awarding authority shall give at least five working days notice in writing to the listed subcontractor of a hearing by the awarding agency on the prime contractor's request for substitution.

C. Audit

The DVBE regulations require inclusion of an audit clause in the contracts sufficient to permit audit for compliance with DVBE requirements. The audit clause contained in SCM 7 meets this requirement.

## 8.17 • ANNUAL REPORT OF DVBE PARTICIPATION

(Rev 1/01)

A. Due Date And General Content

On January 1 of each year, each awarding agency must report to the Governor and the Legislature on the level of participation by DVBEs in contracts for the fiscal year beginning July 1 and ending June 30.

In addition, the report must contain the levels of participation by DVBE for the following categories of contracts:

1. Construction
2. Purchases of materials, supplies, and equipment
3. Professional services
4. All contracts for a dollar amount of less than \$25,000

If the established goals are not being met, the awarding agency shall **include in the** report the reasons for its inability to achieve the standards and identify the remedial steps it shall take.

**B. Consolidated Statewide Report**

**State agencies are also required to report participation to the DGS and the Department of Veteran Affairs by January 1. The DGS compiles statistics on all agencies and submits an annual report to the Governor, Legislature and Department of Veterans Affairs by April 1 (Military and Veterans Code § 999.7).**

## 8.20 • CERTIFIED SMALL BUSINESS PROGRAM

(Rev 1/01)

A. Definition

Small business means a business certified by OSBCR in which:

1. The principal office is located in California.
2. The officers are domiciled in California.
3. The business is independently owned and operated.
4. The business, with any affiliates, is not dominant in its field of operation.
5. And either:
  - a. The business, together with any affiliates, has 100 or fewer employees and average annual gross receipts of \$10,000,000 (10 million) or less over the previous three years, or
  - b. The business is a manufacturer with 100 or fewer employees.

## B. Eligibility

**A business must be formally certified by OSBCR to be considered for the small business preference.** A firm shall qualify for the small business preference if it meets the following requirements:

1. ~~It is formally certified by OSBCR.~~
2. ~~It must be certified in the applicable business type:~~
  - a. ~~Service,~~
  - b. ~~Construction,~~
  - c. ~~Manufacturer,~~
  - d. ~~Non Manufacturer.~~
3. ~~The business type, or types for which the firm is certified must relate to the requirements of the bid.~~

## C. Benefits Of Certification

A certified small business is entitled to claim a five percent preference in bidding on state contracts as explained in SCM 8.21. Certified small businesses are also entitled to interest penalties paid by the state for late payment of invoices. The penalties are greater for certified small businesses than for non-certified businesses.

## 8.21 • SMALL BUSINESS PREFERENCE PROGRAM

(Rev 1/01)

## A. How The Preference Works

1. Certified small businesses can claim the five percent preference when submitting a bid on a state contract. The five percent preference is used only for computation purposes, to a maximum amount of \$50,000, to determine the winning bidder and does not alter the amounts of the resulting contract. A contract awarded ~~by reason~~ **on the basis** of the five percent preference, is awarded **to the small business** for the **actual** amount of **their bid**. ~~the small business firm's actual bid.~~
2. An example of the method used in determining the successful bidder for an IFB, or the cost component of an RFP Primary follows:

<u>Bidder</u>	<u>Bid Amount</u>	<u>Bid after preference</u>	
One	\$30,750	\$30,750	Claims small business status but is not <b><u>a</u></b> certified <b><u>small business</u></b>
Two	\$28,975	\$28,975	Does not claim to be a small business
Three	\$29,520	\$29,520	Claims small business status but is not <b><u>a</u></b> certified <b><u>small business</u></b>
Four	\$29,870	\$28,421	Claims small business status and is <b><u>a</u></b> certified <b><u>small business</u></b>

**For evaluation purposes**, five percent of the low responsible bid of \$28,975 would be \$1,448.75 ( $\$28,975 \times .05$ ); that amount would be subtracted from bidder Four's bid for a computed total of \$28,421.75 ( $\$29,870$  less \$1,448.75). The contract would be awarded to bidder Four **for \$29,870.**

3. The method used in determining the successful bidder for an RFP Secondary follows:
  - (a). Calculate the "earned" score for all bidders.

- (b). If the highest scored proposal is from a non-certified small business, then:
- (1). Calculate five percent (5%) of the cost component received from the highest scored proposal
  - (2). Subtract the amount calculated above from the cost component of all the certified small businesses. This new amount will be the “evaluation” amount used to apportion cost points.
  - (3). Apportion the cost points for all bidders, using the “evaluation” amounts for the certified small business, and the actual bid amounts received from non-certified small businesses.
  - (4). Use the re-apportioned cost points along with the previously scored portions of the bids to arrive at a new total point count for each bid.
  - (5). Award of the contract ~~should~~ **must** go to the bidder with the highest point count.
4. An example of applying the small business preference to an RFP Secondary follows:

Bidders (*Indicates certified small business)	A*	B	C*	D
Criteria 1(15 Max. points)	11	14	13	12
Criteria 2 (25 Max. points)	21	21	14	19
Criteria 3 (30 Max. points)	18	15	15	18
Cost (30 Max. points)	29.1	30.0	28.3	29.7
(cost points awarded are based on these bid amounts)	(\$103)	(\$100)	(\$106)	(\$101)
Total “earned” points for each bidder	79.1	80.0	70.3	78.7

Bidder B’s was the highest scored proposal, a non-certified small business. Therefore the cost points must be re-apportioned after application of the five percent calculation of B’s bid amount. B’s bid amount is \$100.00. 5% of \$100.00 is \$5.00. All bid amounts from certified small businesses will be reduced by this amount (\$5.00). After arriving at new “evaluation” amounts for the certified small businesses, new cost points must be apportioned, using the new “evaluation” amounts as follows:

Note: points established for other criteria for each bidder do not change. Only the points associated with the price component are re-apportioned.

Cost (30 Max. points)	30.0	29.4	29.1	29.1
(new cost points based on these revised bid amounts after applying the preference)	(\$98)	(\$100)	(\$101)	(\$101)
Total final points for each bidder	80.0	79.4	71.1	78.1

The highest scored proposal is now the proposal received from A, a certified small business. The contract award amount will be A’s original bid amount, not the amount used for evaluation purposes.

Note: For small business preference eligibility, a certified small business prime bidder must also use 50 percent certified small business subcontractors for construction contracts over \$100,000, requiring a type A or B license and utilizing two or more subcontractors. **The 50 percent certified small business subcontractors must be maintained throughout the contract. 2 CCR § 1896.2(b)(1)**

B. Small Business Preference Procedures

1. Notice of availability of the Small Business Preference Program must be included in all IFBs and RFPs. Agency staff should be familiar with the program in order to clearly explain it to bidders. Firms needing more information should be referred to **OSBCR Procurement Division, Small Business Opportunity Program Unit. Standard contract language for small business preference can be found at the web site: [www.osmb.dgs.ca.gov/sbcert/program.htm](http://www.osmb.dgs.ca.gov/sbcert/program.htm)**
2. Bidders claiming the small business preference may be requested, but not required, to submit a copy of their certification approval letter from OSBCR with the bid or proposal. Failure to provide a copy of their certification approval letter in their response is not a material deviation. A bidder may claim the preference if the bidder **submits a complete** ~~has an~~ application for certification **to the** ~~on file with~~ OSBCR by 5 p.m. on the bid opening date. Therefore, the awarding agency should check the status of the application with OSBCR before awarding the contract.

C. **Procedures For Tie Bids between small business and DVBE**

**In the event of a precise tie between the low responsible bid of a certified small business and the low responsible bid of a certified disabled veteran business enterprise (DVBE), the contract must be awarded to the DVBE. (GC § 14838 (f))**

## 8.22 • PROMPT PAYMENT OF SMALL BUSINESSES

(Rev 1/01)

A. Reason for the Program

Typically, small business and nonprofit organizations do not have the resources or cash flow to carry the state as an account receivable for an extended period of time. Therefore, to encourage expeditious invoice payment, the law provides for assessment of a penalty for late payments of invoices from contractors, including certified small businesses on all contracts and nonprofit organizations registered with OSBCR (contracts less than \$500,000) (GC § 927.6). As part of the implementation of this law, every bid package **solicitation** should alert the bidder about this program

B. Description of the Program

1. The Prompt Payment Act (G.C. 927 et. seq) applies to both small and non-small businesses (See SCM 7.20). However the penalty calculation differs for small businesses as follows. The penalty is calculated, for certified small businesses and non-profit organizations, at a rate of 0.25 percent of the amount outstanding per **calendar** day from the required payment date. Agencies must **automatically calculate and** pay the penalties, without requiring the contractor to submit an invoice for these penalty amounts (GC § 927.6). ~~The required payment date is determined from the contract, from the date of receipt of an invoice submitted in accordance with the agreement, and from the credit terms as stated on the invoice. The agency has 15 days from the receipt of the invoice in which to dispute the invoice. If the invoice is not disputed within the 15 days, the invoice is presumed to~~

~~be valid as far as the calculation of the penalty is concerned.~~ **See SCM 7.20 for required payment times.**

Note: The time starts to run when the invoice is first received by the agency, not when it gets to your business or accounting office.

2. The program encourages small businesses or recognized nonprofit organizations to stamp their invoices to identify the invoices as subject to the penalty if not paid within the specified time. Small business stamps are available from OSBCR for a fee. However, the invoices are not required to be stamped to be subject to the penalty, and the contractor is entitled to payment of the penalty without any further demand for payment when the invoices are not paid within the prescribed time.

C. Involvement of ~~OSBCR~~ **DGS Procurement Division (PD)**

~~OSBCR~~ **PD, Acquisition Quality Assurance Program** serves as a resource for state agencies and businesses ~~firms~~ in the implementation of the prompt payment program. In particular, State agencies must be sure that a small business is certified before paying the higher interest penalty and that may require contacting PD. ~~OSBCR~~. ~~OSBCR~~ **The PD** does not investigate, arbitrate, or advocate for business firms or state agencies in the resolution of payment disputes.

**The Prompt Payment Advocate in PD works with agency Small Business Advocates to provide information about the Act and assistance to contractors who have difficulty resolving payment problems**

**Effective January 1, 1999, each state agency, with an annual contracting program of \$100,000 or more, must appoint a State Contracting Small Business Advocate to act as a liaison for small business (GC §14846).**

D. Contracting Consideration

The subject of prompt payment should be considered during the contracting process to ensure that the contract gives clear and accurate instructions about where invoices are to be sent. Those employees who will be involved in the receipt and approval of the invoices need to be familiar with the program. In addition, when an award is made to a certified small business, the contract office should appropriately flag the copy of the contract sent to the accounting office.

## 8.30 • PROGRAMS STIMULATING BUSINESS AND EMPLOYMENT IN SPECIFIC GEOGRAPHIC AREAS

(Rev 1/01)

A. Introduction

The state has three programs designed to stimulate business and employment in geographic areas determined to be economically distressed, with areas of high unemployment. These programs are the Target Area Contract Preference Act (TACPA), the Enterprise Zone Act (EZA) and the Local Agency Military Base Recovery Area Act (LAMBA). ~~OSBCR~~ **The Procurement Division/Protest and Dispute Resolution Unit** administers these programs and provides resource information about the programs.

B. Applicability to contracts

The TACPA, EZA and LAMBRA preferences apply to commodity **goods** and service contracts that meet specific criteria. The criteria are described in Table 8.2.

Table 8.2  
Summary of TACPA, EZA and LAMBRA Preferences

Criterion	TACPA	EZA	LAMBRA
Contract Amount: The dollar threshold or applicability	\$100,000 or more	Same as for TACPA	Same as TACPA and EZA
Excluded Contracts: Contracts not covered by the program	Construction contracts and contracts with a designated work site	Same as for TACPA	Same as TACPA and EZA
Geographic Areas: The work site to be used by the contractor to qualify for the preference must be located within a designated area	Distressed areas as specified by the Office of Planning and Research	Enterprise zones as specified by the Trade and Commerce Agency	Work site(s) must be located in a Local <b><u>Agency</u></b> Military Base <b><u>Recovery</u></b> Area as specified by Trade and Commerce Agency
Percent Of Work: The percentage of the contracted work (hours in to perform the contract) that the contractor must agree to perform at the qualifying work site	Commodities 50% Services 90%	Same as for TACPA	Goods 50% Services 100%
Company Base: The home base of the company	Must be in California	Same as for TACPA	Same as TACPA and EZA
Work Site Preference: The percentage of preference associated with the work site	5 percent	Same as for TACPA	Same as TACPA and EZA
Work Force Preference: An additional preference of one to four percent available if the contractor agrees to perform the contract with persons with a high risk of unemployment	Depends on percent of work force: Percent % Hired Preference 5 to 9 1% 10 to 14 2% 15 to 19 3% 20 or more 4%	Same as for TACPA	Same as TACPA and EZA
Preference Limits: The highest preference that can be given	9 percent up to \$50,000	Same as for TACPA	Same as TACPA and EZA
Maximum Combined Preferences: TACPA plus EZA plus LAMBRA plus small business	15% up to \$100,000	Same as for TACPA	Same as TACPA and EZA



### C. Preference Procedures

TACPA, EZA and LAMBRA preference notices and request forms STD 830, 831, and 832 must be included in all IFBs and RFPs when the estimated cost exceeds \$100,000, unless the work site is specified in the contract. To receive the preferences, the bidder must complete the forms and certify to perform the contract work as specified. This commitment must be enforced as part of the contract.

**Standard contract language for TACPA, EZA and LAMBRA preferences can be found at the following web sites:**

- **TACPA** – [www.osmb.dgs.ca.gov/tacpa/program.htm](http://www.osmb.dgs.ca.gov/tacpa/program.htm)
- **EZA** – [www.osmb.dgs.ca.gov/eza/program.htm](http://www.osmb.dgs.ca.gov/eza/program.htm)
- **LAMBRA** – [www.osmb.dgs.ca.gov/lambra/program.htm](http://www.osmb.dgs.ca.gov/lambra/program.htm)

## **9. CONTRACT MANAGEMENT**

### **9.00 • INTRODUCTION**

(Rev 1/01)

The contract manager is the authorized representative of the State of California responsible for administering a contract and monitoring the contractor's performance. (PCC § ~~10358~~ **10348**). The contract manager serves as a liaison with the contractor and may perform administrative tasks ranging from the request of contract services through the performance and final payment for completed services.

### **9.01 • TABLE OF CONTENTS**

(Rev 3/97)

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### **9.02 • DEFINITIONS**

- A. Contract Officer: person designated by the Department to have full responsibility for the management and approval of the Department's contracts. Authorized to sign contracts on behalf of the Department.
- B. Contract Manager: person designated by the Department to monitor the contractor's performance to ensure compliance with all contract provisions (usually a program staff member familiar with the requirements of the contract). Duties may or may not include authority to sign contracts.

## 9.04• RESPONSIBILITIES OF THE CONTRACT MANAGER

(Rev 1/01)

- A. Typical responsibilities of the contract manager are as follows:
1. Develop and write a clear, concise, detailed description of the work to be performed.
  2. Review the draft contract for contract provisions, scope of work, technical requirements, completion dates, benchmarks, timelines, estimated quantities, dollar amounts, and final product.
  3. Ensure compliance with all federal or special regulations.
  4. Ensure that funding is available and the contract is encumbered in conformance with the agency's policy.
  5. Notify the contractor to begin work.
  6. Maintain contract documentation.
  7. Monitor the contract to ensure compliance with all contract provisions:
    - a. Monitor progress of work to ensure that services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract; e.g., review progress reports and interim products.
    - b. Ensure that all work is completed and accepted by the agency before the contract expires.
  8. Assess and request amendments, renewals or new contracts as required allowing sufficient time to process and execute such changes before the contract expires or funds are depleted in order to prevent a lapse in service. Often, two months are required for amendments and renewals, and four to six months for new contracts.
  9. Review and approve invoices for payment to substantiate expenditures for work performed and to prevent penalties being assessed under GC § 926.17. (SCM 8.)
  10. Monitor contract expenditures to:
    - a. Ensure there are sufficient funds to pay for all services rendered as required by contract.
    - b. Identify low spending levels and consider partial dis-encumbrance and reassignment of funds.
  11. Notify appropriate personnel of equipment purchase, if applicable, and ensure property is tagged and inventoried before approving cost reimbursement.
  12. Monitor use of DVBE subcontractors and suppliers to ensure attainment of approved contract participation goals. **Contract Managers should ensure that language for verification of DVBE participation is included in the contract. (See SCM 8.16 A.2.f.)**
  13. Contact the Contracts Office for assistance with contract problems.
  14. Verify that the contractor has fulfilled all requirements of the contract before approving the final invoice.
  15. Identify and approve the final invoice, as appropriate, and forward it to accounts payable for payment.
  16. Complete the Contractor Evaluation form - STD 4, for consultant services contracts of \$5,000 or more. Negative evaluations must be sent to DGS/OLS. See SCM 3.02.5.
  17. Approve the final products or service.

- B. Each agency must prepare the following reports required by legislation (see SCM 7):
1. Fair Employment and Housing (Contract Award Report - STD 16, due within ten working days of the award date) where applicable.
  2. DVBE Report (annual, due January 4)
  3. Small Business Report (annual, due August 1)
  4. Consultant Report (annual, due August 12)

### 9.05• CONTRACT MANAGER “DON’TS”

- A. The contract manager is not authorized to take the following actions:
1. Instruct the contractor to start work before the contract is executed and approved.
  2. Change the description or scope of work of the contract.
  3. Direct the contractor to do work that is not specifically described in the contract.
  4. Sign the contract as the agency’s authorized signator unless authorized in writing.
  5. Sign any contractor’s contract form.
- B. The contract manager must not authorize payment to the contractor for any work not performed satisfactorily.
- C. In addition, the contract manager is not authorized to do the following without an executed and approved contract amendment in place:
1. Extend the time period of the contract.
  2. Allow the contractor to incur costs over the original limit set in the contract.

### 9.07• ETHICS

No contract manager shall accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with the contract manager’s agency. Such circumstances could be construed as intent to influence the contract manager in his or her official duties or as a reward for any official action performed by the contract manager. Favors should be courteously refused. Other ethical issues include the following:

- A. Contract managers shall not make outside purchases of materials or services from any business entity in which they have a financial interest.
- B. Employees are prohibited from using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship.
- C. Even the appearance of questionable or unethical practices is detrimental to both employees and the department.
- D. Resolution of any questionable relationships or practices should be referred to your supervisor.

### 9.09 • RECORD KEEPING

(Rev 1/01)

- A. Each agency is responsible for maintaining all invoices, records, and relevant documentation for three years after the ~~termination of a~~ **final payment under the contract. (GC §8546.7)** The following format is recommended for the maintenance of contract records:
1. Label a file folder for each contract administered. In each file folder include:
    - a. A log sheet for a diary of activities related to the contract. Each time you speak with anyone about the contract, make a note of the date of the discussion, and the subject matter discussed.

- b. A file guide labeled "Invoices." Retain a copy of all invoices in this file guide.
  - c. A copy of the executed contract and other pertinent documentation, such as a copy of the original contract request and any correspondence related to the contract or contractor.
2. Prepare a computer file of all contracts administered. This practice allows easy access to management information, such as expenditures, contract expirations, and contract renewals.
3. Prepare a spreadsheet of expenditures. This practice is especially necessary if electronic tracking is not used. The spreadsheet can be a simple document showing the contract amount encumbered and the deduction for each invoice as it is approved for payment.
4. Document the notification to the contractor of the start date. Work cannot begin before contract execution and the effective date of the contract. Although initial notification to start work may be verbal, it should also be documented in writing and a copy of the notification retained in the contract file.
5. Keep copies of the correspondence with the contractor. All communications about the contract and/or the contractor should be in writing or followed up in writing and a copy placed in the contract file. This practice protects the agency and the contract manager in the event of legal problems or an audit.
6. Monitor and document the performance of contract services. Contract managers must monitor the contractor's performance and document it accordingly.
7. Document the nonperformance of contract services. If problems are encountered during the term of the contract, they should be fully documented. Letters to contractors should outline any problems related to substandard or non-performance. Use contract specifications verbatim in letters so that there is no doubt about the services covered in the contract. All letters about nonperformance should be sent by certified mail with copies to all concerned parties. A copy of the letter should be sent to the appropriate payment unit to eliminate the possibility of erroneous invoice payment. (See also SCM 9.08))
8. Oversee the completion of the contract. To finalize or complete the contract process, contact the contractor to determine whether all invoices have been received. Disencumber any remaining funds by notifying the appropriate payment unit by memo of the amount to be disencumbered. A copy should be retained in the contract file folder. If a computer file was used, close that file. Disencumbrance should be completed in a timely manner to release unspent funds for other purposes within the current fiscal year.
9. Evaluate the contractor. Any consultant services contract of \$5,000 or more requires completion of a Contract/Contractor Evaluation - STD 4, within 60 days after completion of the contract (PCC § 10369). When a negative finding is made, the Contractor Evaluation - STD 4, shall be forwarded to DGS/OLS within five days of completion of the evaluation. Contract/Contractor Evaluation forms are not public documents and should not be kept in the contract file.

## **9.11 • PERFORMANCE OF THE CONTRACTOR**

- A. Problems concerning the contractor's performance must be fully documented in writing and made a part of the contract manager's contract file.
  1. When work under a contract is unsatisfactory, a contract manager should:
    - a. Notify the contractor in writing by certified mail.

- b. Explain why the work is not satisfactory and what corrective action is expected.
  - c. Give a specified period of time in which to satisfactorily perform the work.
2. In addition, the letter should inform the contractor that if the problems are not corrected, or if performance does not satisfactorily improve, the agency will terminate the contract; have the work finished by another contractor; and hold the original contractor liable for any additional costs, including the costs of administration and rebidding of the work.
3. If the contract manager and the contract officer are uncertain of sufficient cause to terminate the contract and assess damages, they may request a legal opinion from the agency's legal counsel.
4. After reviewing the case, legal counsel may make recommendations for an appropriate settlement of the subject contract and outline the necessary steps to be taken.

## **9.12 • TERMINATION OF THE CONTRACT**

(Rev 1/01)

- A. Contractors should be notified by certified mail, or personal service, if an agency intends to exercise a termination for ~~cause~~ **cause** in the contract. The letter should also clearly set forth any task(s) required by the contractor such as return of state equipment, submittal of final invoice for work completed, etc.
- B. The contractor must be reimbursed for all reasonable expenses authorized and incurred up to the date of termination, including any costs associated with termination, pursuant to the terms of the contract. However, the state is only obligated to pay for goods or services that meet the performance standards under the contract

## **9.14 • CLOSING OF SERVICE CONTRACTS**

It is the contract manager's responsibility to close the contract file. This action may consist of, but is not limited to, disencumbrance of funds, evaluation of the contractor, and authorization of final payment of invoices. If applicable, it may involve requesting renewal of the contract.

## **9.16 • RETENTION OF CONTRACT RECORDS**

All contracts involving expenditures of public funds in excess of \$10,000 must contain a provision that the contract is subject to the examination and audit of the awarding department or its delegate or the State Auditor for a period of three years after final payment under the agreement. Therefore, records must be retained for this period. The contractor must agree that the awarding department shall have access to premises, on reasonable notice, during normal business hours for interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance (PCC § 10115 et seq.; 2 CCR §§ 1896.60 et seq. and 1896.75).

An exception to the three year status is when a contract audit is in dispute or litigation. In those instances the time records are to be retained is extended.

## 10. PUBLIC WORKS CONTRACTS

### 10.00• INTRODUCTION

This chapter is intended to provide guidance in the preparation, administration, and execution of small or minor public works contracts that do not exceed ~~\$250,000~~ **\$400,000 for most agencies, and \$500,000 for Resources Agency Departments.** **This chapter applies to public works contracts delegated to State agencies by DGS under PCC §§ 10108 and 10108.5.**

~~Public works contracts in excess of \$250,000 may be undertaken only by~~ **This chapter does not apply to public works contracts which are defined as projects under PCC §10108, by agencies listed in PCC §10106. Currently, those agencies are:** the Department of General Services, Department of Transportation (DOT), Department of Water Resources (DWR), Department of Boating and Waterways (DB&W), and Department of Corrections (DOC). **These agencies may execute public works contracts for any amount and are not subject to the review and approval of the DGS.** Legal reference: (PCC § 10100 et seq.)

### 10.01• TABLE OF CONTENTS

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### 10.05• DEFINITIONS

(Rev 1/01)

- A. A public works contract is defined as “an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind,” (PCC §1101).
- B. A project is defined as the “erection, construction, alteration, repair, or improvement of any state-owned structure, building, road, or other state improvement of any kind with a total cost exceeding an amount periodically adjusted by the Director of Finance (PCC §10105). **Budget Letter 00-02 has established this amount as \$117,000.** ~~For the calendar years 1998 and 1999, this amount is \$111,000 (MM 98-01)~~

## 10.10 • AUTHORIZATION OF PUBLIC WORKS CONTRACTS

(Rev 1/01)

**NOTE:** There is no sole source process available for Public Works Contracts.

Table 10.1  
Authorization and Legal References

Type of Contract	Authorization Required	Legal Reference
Under <del>\$111,000</del> <b><u>\$117,000</u></b>	DGS/OLS	PCC § 10295
Between <del>\$111,000</del> <b><u>\$117,000</u></b> and <del>\$250,000</del> <b><u>\$400,000</u></b>	DGS/RESO STD. 23 & DGS/OLS	PCC § 10108
<b><u>Up to \$500,000</u></b>	<b><u>Resources</u></b> <b><u>Agency</u></b> <b><u>department with</u></b> <b><u>consent of DGS</u></b>	<b><u>PCC §10108.5</u></b>
Public works by: DWR DB&W DOC DOT DGS	Attorney general or Department attorney	PCC §§ 10106, 10108, and 10220 Water Code §120 et seq. Harbor and Navigation Code § 50 Penal Code §7000 et seq. GC §14000 et seq. GC §14600 et seq.

## 10.15 • PUBLIC WORKS CONTRACTS BETWEEN \$1,000 AND ~~\$111,000~~

**\$117,000**

(Rev 1/01)

- A. Prepare the bid package as follows:
1. Prepare detailed plans and specifications. Obtain approval from:
    - a. The State Fire Marshal (SFM):

SFM approval required for changes in occupancy or use; remodels and modifications; and anytime flammable, combustible or hazardous materials will be stored or planned for the site.

Note there may be a 30-45 day turnaround on plan reviews; over-the-counter services can be arranged for plans of 3 pages or less with an appointment; property development without structures or fences does not require plan review and approval;

- b. The Department of General Services, Division of the State Architect, Handicap Access Unit
2. Prepare the Notice to Contractors, including the following notifications:
  - a. A statement that the five percent small business preference will be granted to properly certified small businesses (a completed form STD 811 must be submitted with the bid proposal to request this preference)



- b. The State Contractors License Board license classification necessary to bid on the contract
  - c. Where to obtain bid packages
  - d. Date, time, and place that bids must be received to be considered
  - e. Notice that the successful bidder must enter into a contractual agreement in the form of a Standard Agreement - STD 2 or STD 213
  - f. List of prevailing wage rates from the Department of Industrial Relations or a statement that the prevailing rate of per diem wages are on file and available for inspection
  - g. Date, time, and place of a pre-bid meeting and/or site inspection. **Mandatory pre-bid meetings must occur at least 5 calendar days after the first publication of the initial Notice to Bidders.(PCC 6610)**
  - h. If the contract is estimated to exceed \$ 5,000:
    - Necessity of providing a payment bond (STD 807) **equal to 100% in a sum not less than one-half** of the total amount payable under the contract
    - Statement that the contract is subject to state contractor nondiscrimination and compliance requirements (2 CCR § 8201)
3. Prepare instructions to bidders on the following:
- a. Examination of bid documents and site
  - b. Bids and bidders to comply with
    - Sealed bids
    - Bid form required to be used
    - Responsibility for ensuring that their sealed bid is received at the proper time and at the proper place as shown in the Notice to Contractors or addenda. Any bid received after the scheduled closing time for the receipt of bids will be returned unopened
    - DVBE participation requirements
    - Drug-free workplace certification
    - Restrictions applying to state employees
    - Restrictions on employment of undocumented aliens
    - Antitrust claims
    - Corporate qualification to do business in California
    - Any other information regarding the bid
4. Prepare the bid proposal form, allowing for:
- a. Bid amount
  - b. Small business preference request
  - c. Place for listing of subcontractors' names, business addresses, and contractor's license numbers of all subcontractors who will perform work, labor, or render services in an amount in excess of one-half of one percent of the general contractor's total bid; and the portion of the work that each will perform
  - d. General contractor's name, business address, federal employer identification number, and contractor's license number, classification, and expiration date
  - e. Statement of Compliance which may be printed on the bid proposal form in lieu of using a STD 19
  - f. Signature block, including the printed name of the officer signing the bid, the officer's title and telephone number, and the date.

**Note: A prime contractor whose bid is accepted may not substitute a subcontractor listed in the original bid unless the provisions of PCC 4107 or 4107.5 apply and a hearing is held, if required.**

5. Include all forms required to be submitted with the bid proposal:
    - a. Drug-free Workplace Certification - STD 21
    - b. DVBE participation certifications and/or good faith effort documentation
    - c. Labor Code Certification
    - d. Statement of Compliance - STD 19, if not included on the bid proposal form
    - e. Non-collusion affidavit (must be notarized) see Appendix
    - f. Small Business Preference and Certification Request (STD 811)
    - g. Bid Refusal
    - h. Standard Form of Guarantee
  6. Prepare General Conditions, including:
    - a. Insurance requirements; liability and workers compensation
    - b. Bond requirements ~~(minimum one-half of bid amount)~~ **Payment Bond (STD 807) if contract exceeds \$5,000** ~~Performance Bond if contract exceeds \$10,000 and progress payments will be made (prepared on standard bonding company forms)~~
      - **Payment Bond (Std 807) if contract exceeds \$5,000 – 100% of contract amount**
      - **Performance Bond if contract exceeds \$10,000 and progress payments will be made – 100% of contract amount**
    - c. Prevailing wage rates
    - d. National Labor Relations Certification
    - e. Standard California Nondiscrimination Construction Contract Specifications - STD 18
    - f. Use of apprentices
    - g. Guarantee
    - h. "As Built" plans
    - i. Final inspection and acceptance
    - j. Other conditions as required
  7. Include special provisions:
    - a. Contractor's license classification required
    - b. Number of working days allowed
    - c. Liquidated damages (if included, must provide that the contractor shall not be assessed liquidated damages when the delay in completing the project is caused by the failure of the state or the owner of a utility to provide for removal or relocation of the existing utility facilities)
    - d. Progress payments
    - e. Progress schedule
    - f. Other conditions as required
  8. Prepare detailed specifications.
  9. Prepare drawings (if necessary).
  10. Prepare bid refusal form.
  11. Prepare other provisions as required
- B. Advertise in the California State Contracts Register including:
1. Description of work to be done.

2. Bid opening date and time.
  3. Contract duration.
  4. Type of contractor's license required.
  5. City and county in which work is to be done.
  6. Contact name and phone number to obtain bid package.
- C. Distribute bid packages to:
1. Prospective bidders.
  2. DVBE assistance organizations.
  3. Builders exchange nearest the work to be performed if contract is estimated to be more than \$5,000.
- D. Hold a pre-bid meeting and site inspection:
1. Hold a pre-bid meeting to explain all required forms, including the Drug-free Workplace Certification, DVBE participation and documentation, Labor Code Certification, and non-collusion affidavit (which must be notarized).
  2. Hold a site inspection to allow all prospective contractors to see where the work is to be done.
- E. Conduct the bid opening.
1. Verify that all required forms are completed and signed including:
    - a. Bid proposal form
    - b. Drug-free Workplace Certification
    - c. DVBE participation (evaluate for compliance)
    - d. Labor Code Certification
    - e. Non-collusion affidavit (must be notarized)
    - f. Small Business Preference and Certification Request - STD 811
  2. Verify the status of the business as follows:
    - a. Contractor's license and classification with the Contractors License Board
    - b. Corporation status with the Secretary of State
    - c. Small business status with the Office of Small Business Certification and Resources.
  3. Award the contract to the lowest responsible and responsive bidder
  4. Transmit reports:
    - a. Within 10 working days of an award, send a completed STD 16 to the Department of Fair Employment and Housing if the contract award exceeds \$5,000, including contracts with the University of California.
    - b. Within five working days of an award, send a completed Division of Apprenticeship Standards - DAS 13, to the Department of Industrial Relations if the contract award exceeds \$30,000 or 20 working days.
- F. Prepare the Standard Agreement - STD 13 or STD 213, including:
1. Statement of work
  2. Period of performance
  3. Cost and payment including:
    - a. Total amount to be paid

- b. When payment(s) will be made
    - If making progress payments, include the provision that the state shall retain out of each payment an amount equal to ten percent of the payment.
    - The departments of Boating and Waterways, Corrections, General Services, Transportation, and Water Resources must publish progress payments made to the general contractor in the California State Contracts Register.
  - c. Address to which invoices and progress reports shall be mailed
- 4. Standard California Nondiscrimination Construction Contract Specifications for contracts exceeding \$5,000 (STD 18)
- 5. National Labor Relations Board Certification
- 6. Project monitor's name and telephone number
- 7. Contract amendments
- 8. Resolution of disputes
- 9. Final approval required before contract has force or effect
- 10. Antitrust claims
- 11. Americans with Disabilities Act
- 12. Restrictions applying to state employees
- 13. Prevailing wage rates
- 14. Certificate of Insurance
- 15. Audit language (if contract exceeds \$10,000) and/or DVBE participation
- 16. Instructions to bidders
- 17. Bid proposal form
- 18. Labor Code certification
- 19. Non-collusion affidavit
- 20. General conditions
- 21. Special provisions
- 22. Specifications
- 23. Drawings
- G. Prepare the award letter and mail the documents to the contractor, requesting the following actions:
  - 1. Standard Agreement - STD 2 or STD 213: Sign all four copies.
  - 2. Specifications and Drawings: Sign all four (4) sets.
  - 3. Payment Bond - STD 807: Have bonding company execute two copies (if contract exceeds \$5,000).
  - 4. Performance Bond: Have bonding company execute two copies on standard bonding company forms (if contract exceeds \$10,000 and progress payments will be made).
  - 5. Certificate of Insurance: Have insurance agent execute for liability and workers compensation insurance.

6. Asbestos notification letter.
  7. ~~Vendor~~ **Payee** Data Record: Complete and return (send to accounting office and retain one copy in the contract file).
- H. Prepare the Contract Transmittal - STD 15 or STD 215 including:
1. Certificate of Insurance for liability and workers compensation insurance.
  2. Payment Bond (if contract exceeds \$5,000).
  3. Performance Bond (if contract exceeds \$10,000 and progress payments will be made).
  4. Secretary of State corporate status check.
  5. Contractor's License Board verification.
  6. Small business verification (if applicable).
  7. Drug-free workplace certification.
  8. DVBE participation package (if applicable).
  9. California State Contracts Register advertisement.
  10. List of contractors sent bid package.
  11. All bids received.
  12. Copy of bid package.
- I. Route the Standard Agreement and transmittal package to the accounting office for encumbrance and to the approving authority.
- J. When the approved contract is returned, send a letter to the contractor with its approved copy and distribute the remaining approved copies as necessary.

**10.20 • PUBLIC WORKS CONTRACTS BETWEEN ~~\$111,000~~ \$117,000  
AND ~~\$250,000~~ \$400,000**

(Rev 1/01)

- A. Obtain approval from DGS/RESO on a Request for Project Undertaking by State Agency STD 23.
- B. Include all requirements for contracts between \$1,000 and ~~\$111,000~~ \$117,000.
- C. Place additional advertisements as follows:
  1. Advertise the Notice to Contractors once a week for two consecutive weeks in one local paper of general circulation published in the county where the work is to be done. Obtain an affidavit of publication.
  2. Advertise the Notice to Contractors once a week for two consecutive weeks as follows:
    - a. If the work is to be done in the counties of Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, or Ventura, advertise in a trade paper of general circulation published in Los Angeles County. Obtain an affidavit of publication.
    - b. If the work is located in a county other than those listed in 2(a) above, advertise in a trade paper of general circulation published in San Francisco and provide a reasonable length of time between the publication of the advertisement and the date of submission of bids to give contractors sufficient time to prepare bids. Obtain an affidavit of publication.

Note: Until further notice, exemption is given for the direct placement of such advertisements for publication by the agency without prior submission to the Department of General Services. Invoices for the cost of advertisements may be submitted directly to the Controller with the claim for payment.

- D. Include in the instructions to bidders the requirement that the bid must be accompanied by one of the following forms of bidder's security: cash, a cashier's check, a certified check, or a bidder's bond executed by an admitted surety insurer and made payable to the state agency. The security must be in an amount equal to ten percent of the amount bid. A bid must not be considered unless one of the forms of the bidder's security is enclosed with it.
- E. Prepare the contract transmittal
  - 1. Include all information shown in Section 10.15(H).
  - 2. Include an approved copy of form STD 23.
  - 3. Include the affidavits of publication for advertisements in both the local paper and the trade paper.

## **10.25 • REQUIREMENTS OF PUBLIC WORKS CONTRACTS**

### **A. Specifications**

Ensure that whoever prepares the bid specifications is aware of the following requirements:

- 1. Work specifications

Prepare clear and complete written specifications for the work. The specifications must be adequate in detail to apprise the prospective bidder of the character and extent of the work to be done and to ensure that bids will be comparable and competitive. Room for speculation and conjecture must be reduced to a minimum.
- 2. Product specifications
  - a. Specifications calling for a designated material, product, item, or service by a specific brand or trade name must list at least two brands or trade names of comparable quality or utility followed by the words "or equal."
  - b. In cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the agency, the specification may list only the one followed by the words "or equal."
- 3. The specifications shall provide for a period of at least 35 days after the award of the contract for submission of data substantiating a request of an "or equal" item. PCC § 3400 does not apply if the agency makes a finding, included in the specifications, that a particular material, product, item, or service is designated by specific brand or trade name so that a field test or experiment may be made to determine the product's suitability for future use. If the agency is aware of an equal product manufactured in California, it must name such product in the specifications.

### **B. Prevailing Wages:**

- 1. Obtain from the Department of Industrial Relations the prevailing wage rates before requesting bids. ([www.dir.ca.gov](http://www.dir.ca.gov)) (Labor Code §§ 1770 and 1773).

2. The prevailing wage rates for each of the crafts or trade classifications involved in the proposed work to be contracted for must be set forth in the Invitation for Bids and in the contract itself.

Note: In lieu of specifying the rate of wages in the Invitation for Bids and in the contract, the agency may include a statement that copies of the prevailing rate of per diem wages are on file at its principal office and shall be made available to any interested party on request.

3. The general prevailing rates of wages may be obtained from the Department of Industrial Relations or any source authorized by the Department of Industrial Relations.

## **10.30 • PUBLIC WORKS CONTRACTS REQUIRED LANGUAGE**

**(Rev 11/99)**

### **A. Instructions To Bidders**

1. Employment of undocumented aliens

"No state agency or department, as defined in Public Contract Code § 10357, that is subject to this code, shall award a public works contract to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a public works contract, who has, in the preceding five years, been convicted of violating a state or federal law regarding the employment of undocumented aliens. See Public Contract Code § 6101."

2. Antitrust claims

"The contractor offers and agrees and will require all of his other subcontractors and suppliers to agree to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 USC § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. The assignment made by the contractor and all additional assignments made by the subcontractors and suppliers shall be deemed to have been made and will become effective at the time the awarding body tenders final payment to the contractor without further acknowledgment or the necessity of tendering to the awarding body any written assignments."

"If an awarding body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Government Code sections 4550 - 4554, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, on demand, recover from the public body any portion of the recovery, including treble damages, and attributable overcharges that were paid by the assignor but were not paid by the public body as a part of the bid price, less the expenses incurred in obtaining that portion of the recovery. On demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under Government Code sections 4550 - 4554 if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

**B. General Conditions**

1. Prevailing Wage (See SCM 10.25B.)
2. National Labor Relations Certification

“By signing the contract, the contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two year period because of the contractor's failure to comply with an order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board.”

**C. Standard Agreement - STD 2 or STD 213**

1. National Labor Relations Certification

(Use the same wording as provided in B.2. above)

2. Audit Language (For contracts in excess of \$10,000 and/or when DVBE participation is required)

“The contractor agrees that the (awarding agency), or the Bureau of State Audits or its designated representative, shall have an absolute right of access to all of the contractor's records, files, documents, accounts, and financial affairs as deemed necessary for the purpose of conducting an audit to determine compliance with the terms and conditions of this contract. The contractor shall provide the auditor(s) with any relevant information requested without unnecessary delay and, on reasonable notice, permit access to its premises during normal business hours for the purpose of interviewing staff and inspecting and copying such books, records, accounts, and any other material as warranted to conduct the audit. The contractor further agrees to maintain such records for a period of three years after final payment is made on this contract or three years after resolution of all issues that may arise as a result of any litigation, claim, negotiation, or audit related to the contract, whichever is later. The state agrees to treat as confidential any proprietary information obtained as a part of any such audit.”

3. Americans with Disabilities Act

“By signing this contract, the contractor assures the state that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 USC § 012101 et. seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.”

4. Labor Code Certifications

- a. I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract.



- b. "It is hereby mutually agreed that the contractor shall forfeit to the State (enter amount from LC §1775) dollars for each calendar day, or portion thereof, for each worker paid by him or her, or subcontractor under him or her, less than the prevailing wage so stipulated and in addition the contractor further agrees to pay to each worker the difference between the actual amount paid for each calendar day, or portion thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly, registered apprentices."

Note: Labor Code Section 1771.5 allows exemptions from the general prevailing rate under specific conditions for departments with Labor Compliance Programs.
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- c. It is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor shall forfeit, as a penalty to the state, twenty-five dollars for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week, in violation of Labor Code Sections 1810-1815, inclusive.
- d. Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
- e. Properly registered apprentices may be employed in the prosecution of the work. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. The contractor and each subcontractor must comply with the requirements of Labor Code Section 1777.5 and any related regulations regarding the employment of registered apprentices.
- f. Each contractor and subcontractor shall comply with the Labor Code Section 1776 regarding record keeping.

## CHAPTER 10 - APPENDIX

# NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID FOR PUBLIC WORKS

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and

says that he or she is \_\_\_\_\_ of  
(position or title)

(the bidder)

the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Dated: \_\_\_\_\_

By \_\_\_\_\_  
(person signing for bidder)

## 11. ARCHITECTURAL AND ENGINEERING CONTRACTS

### 11.00 • INTRODUCTION

(Rev 1/01)

This chapter explains the state's process for selecting the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms. This process is commonly referred to as the A & E method.

Legal authority: GC § 4525 et seq.; PCC § 6106.

Each state agency must develop its own regulations for implementation in order to use the (A & E) selection process. **DGS' review of A&E contracts will include determining whether the agency complied with their own regulations.**

### 11.01 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	11.00
Table of Contents	11.01
<b><u>Types of Projects</u></b>	<b><u>11.03</u></b>
Selection Process Based on Qualifications	11.05
Evaluation of Qualifications	11.06
<b><u>Negotiating A&amp;E Contracts</u></b>	<b><u>11.08</u></b>
Award of Contract	11.10

### 11.03 • TYPES OF PROJECTS

(New 1/01)

- A. **Specific Projects. A project that involves a single subject matter, such as a building or improvement at a designated site, will result in a single contract.**
- B. **Single Firm. Contract must be let to the single most qualified firm.**
- C. **Multiple Contracts / Multiple Firms**
  1. **Circumstances for which you can award to multiple firms would be as follows:**
    - a. **Multiple contracts with each contract covering a different, specific geographic region.**
    - b. **Multiple contracts with each contract covering a specific, unique discipline.**
    - c. **Multiple contracts for which there would be a primary contractor, with a backup contractor in the event the primary contractor is unavailable for an assignment.**
  2. **An agency must have regulations supporting multiple award contracting.**

**D. On-Call” Contracts**

**When a project can be shown to involve more than one component, site or activity, an “on-call” contract (sometimes referred to as a “retainer” contract) may be appropriate. An agency must have regulations to support on-call contracting. Various components may appropriately be designated a project if they involve the same kind of design work at several locations.**

**11.05• SELECTION PROCESS BASED ON QUALIFICATIONS**

Selection for professional services of A & E contractors by public agencies must be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required at a fair and reasonable price.

Projects requiring A & E professional services must be published in a statewide announcement through publications of the respective professional societies. This requirement is in addition to advertising in the California State Contracts Register.

The Request for Qualifications (RFQ) is the solicitation document that sets out the criteria for determining the best qualified professional for the project

Criteria should include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel, staff capability, workload, ability to meet schedules, principals to be assigned, nature and quality of completed work, reliability and continuity of the firm, location, professional awards, and other relevant considerations. Such factors shall be weighed according to the nature and complexity of the project, the needs of the state, and the special requirements of the specific project.

**11.06 • EVALUATION OF QUALIFICATIONS**

(Rev 1/01 portion moved to new 11.08)

The statements of qualifications received by the date specified in the RFQ are evaluated together with performance data on file. Generally, the statements of qualifications are scored and ranked by a panel of individuals from the public agency, although professionals from outside the agency may also participate, depending on the nature of the project.

**11.08 • NEGOTIATING A&E CONTRACTS**

(New 1/01 moved & renumbered from 11.06)

After the discussions, the public agency shall negotiate a contract with the best qualified firm at compensation that the agency determines to be fair and reasonable. PCC § 6106 sets forth relevant time frames that must be adhered to in the negotiation and contracting process.

If the agency is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be terminated and negotiations undertaken with the second most qualified firm. If the agency is unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in order of their competence and qualification and continue negotiations until an agreement is reached.

**11.10 • AWARD OF CONTRACT**

(Rev 3/98)

**A. Contract Award**

Award of contract will be made to the A & E firm that:

1. Successfully negotiated a fee, and
2. Has complied with the DVBE requirements (if required).

**B. Processing A&E Contracts**

On determining a need for services, the agency should prepare a contract that contains:

1. Names of the project manager, field representative, and project analyst
2. An accurate work description
3. Specifics of when, where, and for whom work is to be performed
4. Description of the required completion or inspection report
5. Time limitation
6. Monetary limitation
7. Expenses allowed
8. Payment clause, including progress payments
9. Extra work
10. Other special provisions

**C. Review And Approval**

The contract and copies are prepared and sent to the A & E firm. On return from the (A & E) firm, agency approvals are obtained. Then the contract is sent to DGS/OLS for review if required. The package consists of :

1. California State Contracts Register advertisement
2. Contract
3. DVBE package (if applicable)
4. RFQ package and replies

These documents are used to substantiate compliance by the contracting agency with all procedural requirements.

## GLOSSARY OF TERMS

(Rev 1/01)

The following is a listing of definitions commonly used in the contracting process:

<b>advance payment</b>	Any payment made to a contractor before work has been performed or goods have been delivered. Advance payments are permitted only if authorized by statute. (For example, interagency agreements may provide for advance payments under (GC § 11257.)
<b>agreement</b>	A contract.
<b>amendment</b>	A formal modification or change of a material term, such as the term, cost, or scope of work, in one or more provisions of an existing contract.
<b>assignment</b>	Transfer of contractual rights from one person to another.
<b>authorized service representative</b>	A term used in relation to those persons who may perform repair and maintenance of equipment and are so designated by the equipment manufacturer.
<b>awarding agency</b>	The contracting state agency, the agency soliciting the contract and making the contract award.
<b>bid</b>	A potential contractor's reply to a solicitation for purchase of goods or services which represents what the contractor would charge to provide those goods or services.
<b>bidder</b>	An individual, sole proprietorship, firm, partnership, corporation, or any other business venture that responds to an Invitation for Bids or Request for Proposals by submitting a bid to the contracting agency. A potential contractor.
<b>bidder's conference</b>	A meeting with potential bidders before the bid submission date.
<b>bidder's security</b>	A bond or undertaking required for public works projects (SCM 10.05 and 10.20).
<b>board resolution</b>	A formal decision by the governing body of a public agency, often required to authorize the purchase of goods or services.
<b>breach of contract</b>	Failure, without legal reason, to comply with the terms of the contract.
<b>California State Contracts Register</b>	The state publication (now electronic) containing advertisements for contract solicitations and a list of contracts for which exemptions from bidding have been approved.
<b>certified small business</b>	A business that has been certified by the Office of Small Business Certification and Resources, Department of General Services, as a small business as defined in GC § 14837 and 2 CCR § 1896. OSBCR issues the business a letter of certification that allows the business to claim the small business preference when submitting bids and to obtain statutory penalties for late payments on contracts (SCM 8).
<b>circumvention</b>	The act of avoiding the effect or intent, going around, defeating by ingenuity or strategy, or nullifying the purpose.
<b>commodities</b>	Goods, including such tangible items as movable or personal property, as opposed to services.
<b>competitive bidding</b>	A purchasing process in which the opportunity to make offers to supply goods or services is not limited to any one bidder. All bidders are evaluated on the same fixed criteria.
<b>consideration</b>	Something of value that induces a person to enter into a contract. The consideration may include some right, interest, profit, or benefit obtained by one party, or some forbearance, detriment, loss, or responsibility assumed by the other party.

<b>consulting services contract</b>	A contract for services of an advisory nature, which provides a recommended course of action or personal expertise. The definition does not include A&E contracts ( <del>PCC §10356-10335.5</del> ; SCM 3).
<b>contract</b>	A legally binding agreement between the state and another entity, public or private, for the provision of goods or services.
<b>contract manager</b>	A person designated by the responsible state agency or department to manage performance under a contract.
<b>contractor</b>	A party contracting with the awarding agency. <i>Vendor</i> is often used synonymously, with <i>contractor</i> .
<b>contractor identification number</b>	The number assigned to the contractor for tax purposes. This may be the social security number or the federal identification number.
<b>cooperative agreements</b>	A special agreement with the federal government in which there is a general public benefit, as opposed to a specific benefit accruing only to the contracting federal agency.
<b>corporation</b>	A fictional entity, created by or under the authority of the laws of a state, which has the legal authority to engage in certain activities.
<b>debarment</b>	Under federal contracting law, a process in which a contractor is precluded from bidding on or entering into contracts with the federal government. Federal rules also prohibit federal contractors from contracting with debarred businesses.
<b>default</b>	Failure to perform an obligation in a contract.
<b>direct cost</b>	Any cost that can be specifically identified as generated by and in accordance with the provisions or activity requirements of the contract.
<b>disabled veteran business enterprise (DVBE)</b>	A business that meets all of the following criteria: (1) at least 51 percent of the business is owned by one or more disabled veterans or, in a business whose stock is publicly held, at least 51 percent or more of the stockholders are disabled veterans; (2) the management and control of the business are exercised by one or more disabled veterans; (3) the business is domestically owned and its home office is in the United States; and (4) the business has been certified as a DVBE by OSBCR ( <i>Military and Veterans Code</i> § 999[g]).
<b>electronic data processing (EDP) contract</b>	A contract for the acquisition of goods or services related to information technology: computer hardware, software licenses, software development, and maintenance of hardware and software.
<b>emergency</b>	A sudden, unexpected occurrence that creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.
<b>encumbrance</b>	A commitment of funds guaranteeing a source of payment for a specific transaction.
<b>enterprise zone act (EZA)</b>	(GC §§ 7080 et seq.) provides preferences for state contracting opportunities in designated enterprise zones.
<b>evaluation committee</b>	A committee or panel that convenes to evaluate the qualifications of bidders who respond to a Request for Proposals.
<b>execution of a contract</b>	The act of signing a contract, which provides a legal basis for required performance by parties to the contract.

<b>executive order</b>	A directive issued by the Governor that establishes binding policy for government agencies covered therein.
<b>exemption</b>	A formal waiver by DGS, of DGS responsibilities required by statute, regulation, or policy, or a delegation of such responsibilities by DGS to a state agency. Some common exemptions awarded by DGS involve contract approval, advertising, and competitive bidding requirements.
<b>exemption letter</b>	The letter of authorization establishing an exemption issued by DGS.
<b>general provisions</b>	Terms and conditions that apply to all contracts for services and are included in any final document.
<b>good faith effort (GFE)</b>	A sincere effort meeting the legal steps made by a bidder or potential contractor to meet DVBE goals as defined in <i>PCC</i> § 10115.2(b) and the implementing regulations.
<b>goods</b>	Commodities (tangible items, such as movable or personal property), as opposed to services
<b>grant</b>	To bestow or confer a benefit on another, with or without consideration. In contrast, a contract requires an exchange of consideration. Grants provided by state agencies must be authorized by the Legislature.
<b>hazardous activity</b>	An activity that unduly exposes the contracting agency to liability for personal injury or property damage, an ultrahazardous or dangerous activity. Examples of such activities are listed in <i>SCM</i> 3.12. Contracts for hazardous activities must be accompanied by a certificate of insurance that names the state as an additional insured and financially protects the state in the event of a legal action arising out of performance of services under the contract.
<b>hearing</b>	A formal proceeding, customarily public, in which evidence is presented and issues of fact or law are adjudicated.
<b>income contract</b>	A contract in which the contracting agency is receiving money in exchange for services provided by that agency. Such contracts are also known as revenue contracts or receivable contracts.
<b>indemnification</b>	Contractual provision in which one party will reimburse the other party for settlements or judgments on claims arising from the contract.
<b>indirect cost rates/overhead</b>	An amount or pro rata share of existing salaries and benefits, rent, equipment, materials, and utilities attributable to a function or activity but not necessarily generated directly by the function or activity.
<b>independent contractor</b>	A person working for an entity under contract and not an employee of the contracting entity. The contracting entity does not pay unemployment, disability, or workers' compensation insurance or withhold taxes from payments to the person. An independent contractor normally follows the contracting agency's direction on the results of the work but not on the means of accomplishing the work.
<b>in-kind services</b>	Services performed in exchange for other services in lieu of money.
<b>interagency agreement</b>	An agreement between two or more state agencies ( <i>GC</i> §§ 11256 - 11263; <i>SCM</i> 3.03).
<b>invitation for bids (IFB)</b>	A type of solicitation document, used in a formal competitive bidding process, which contains a precise statement and complete specification of what the agency is attempting to purchase. Qualifying bidders compete solely on the basis of cost.



<b>joint powers agency</b>	An agency formed by agreement of two or more public agencies. Under this agreement, the joint powers authority may exercise any power common to the contracting parties ( <i>GC § 6502</i> ).
<b>lease</b>	A contract for the exclusive use or possession of real or personal property for a limited period of time in exchange for a valuable consideration.
<b>Legal services</b>	Services rendered by an attorney.
<b>local agency military base recovery area act</b>	Provides preference for state contracting opportunities in designated local agency military base areas.
<b>license</b>	A contract for the temporary use of real or personal property.
<b>local assistance contract</b>	An agreement financed out of the local assistance portion of the budget, includes agreements providing assistance to local governments and aid to the public directly or through an intermediary, such as a nonprofit corporation organized for that purpose.
<b>master service agreement (MSA)</b>	An agreement entered into by the Department of General Services or another state agency for use by other state agencies who wish to use the same services. It may also be an agreement by a state agency for use by divisions of that agency ( <i>SCM 3.4</i> ).
<b>memorandum of understanding (MOU)</b>	A contract.
<b>non-collusion affidavit</b>	An affidavit, required of bidders on public works contracts, that asserts that the bidders did not conspire with each other in preparing and submitting bids.
<b>non-profit</b>	A group, often a corporation, organized for purposes other than generating profits; for example, a charitable, educational, religious, or scientific organization. Certification by the IRS or Franchise Tax Board is a common attribute.
<b>notice to contractors</b>	The cover letter or instruction for prospective bidders that is attached to an Invitation for Bids or Request for Proposals.
<b>party</b>	A participant in a contract who incurs obligations or receives benefits under the contract.
<b>payment bond</b>	A bond required for public works contracts in excess of \$5000. The bond covers the costs of the contractor's employees, subcontractors, and suppliers in the event that the contractor fails to make those payments. The payment bond must equal <del>at least one-half of</del> the contract price.
<b>performance bond</b>	A bond required for public works contracts in which progress payments are made; the bond insures costs in the event that the contractor abandons the work before its completion or fails to complete the work as required by the contract. The performance bond must <del>amount to at least one-half of</del> <b>equal</b> the contract price.
<b>periodic payments</b>	Payments made at specified intervals during the term of a contract.
<b>person</b>	An individual or a business entity, including but not limited to a sole proprietorship, partnership, corporation, or joint venture. For purposes of the <i>SCM</i> , "person" may also refer to a government agency or a nonprofit association.
<b>personal property</b>	Property consisting of tangible items as opposed to land or fixtures on land (real property).

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<b>prevailing wage</b>	The average wages paid, as and determined by the California Department of Industrial Relations to a distinct trade, craft, classification, or type of worker in the specified geographic area in which a public work is performed.
<b>principal</b>	The highest in rank, the chief, the main participant in a given situation, the individual having prime responsibility for an obligation.
<b>primary RFP method</b>	The two-envelope method for evaluating proposals in which qualifications and cost proposals are submitted in two separate sealed envelopes. Qualifications are first evaluated according to criteria set in the RFP. For bidders who meet the minimum qualifications standards, the awarding agency then evaluates the cost proposals. The award is made to the lowest bidder meeting the minimum qualifications.
<b>progress payments</b>	Partial payments related to steps or phases toward the completion of the required services under a contract.
<b>Prompt Payment Act</b>	Statutory provisions that set interest penalties on late payments for state contracts (GC §§ 926.15, 926.17).
<b>proprietary software</b>	Software that is owned and copyrighted by the contractor who in turn sells licenses for the use of this product.
<b>protest</b>	A formal challenge by a bidder to the intended award of a contract solicited by an Invitation for Bids or a Request for Proposals.
<b>protestant</b>	A bidder who files a protest.
<b>public entity</b>	A county, city, district, local public body, state board, state commission, federal agency, or joint powers authority.
<b>public policy</b>	The general principles of right and wrong which prevail within the jurisdiction of a governmental entity.
<b>public works contract</b>	A contract for the erection, construction, alteration, repair, or improvement of any state structure, building, road, or for other state improvement of any kind (PCC § 1101).
<b>real property</b>	Land and fixtures on land.
<b><u>request for application</u></b>	<b><u>A document that solicits potential grantees to apply for a grant.</u></b>
<b>ratification</b>	An act or an agreement by which something previously done is confirmed or adopted.
<b>reimbursement contract</b>	A contract in which the contracting agency is paying for the services of the contractor or for some burden incurred by the contractor. Such contract is also called a payable contract.
<b>request for proposals (RFP)</b>	The solicitation document that is most appropriate in those situations in which it is necessary and appropriate to evaluate bidders on the basis of their qualifications as well as their price. The RFP describes the qualification requirements, performance specifications, time frames, and other requirements and asks bidders to describe how they would accomplish the services and at what price.
<b>responsible bidder</b>	A bidder who is fully capable of performing the contract. When there is documented evidence that a bidder is not financially qualified or is otherwise unable to perform the required services, the bidder may be deemed not responsible and the bid may be rejected by the awarding agency. The bidder may then protest the intended award of the contract and is entitled to a hearing.
<b>responsive bidder</b>	A bidder whose bid meets the specifications and other requirements contained in the IFB or RFP.
<b>revenue contract</b>	See <i>income contract</i> .

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<b>secondary RFP method</b>	The method for evaluating proposals obtained through an RFP in which an evaluation panel assesses each proposal according to a set of criteria, of which one must be the cost. Each criterion is assigned a weight, with substantial weight going to cost. The award is made to the bidder whose proposal is given the highest score.
<b>service contract</b>	A contract in which the contractor provides a duty or labor, as opposed to commodities or goods.
<b>signature</b>	The act of writing one's name on a document to attest to its validity; the written name.
<b>small business</b>	See <i>certified small business</i> .
<b>sole source</b>	A situation in which only one person has the opportunity to submit a bid on a contract.
<b>specific performance</b>	The fulfillment or achievement of a contract in accordance with its terms, relieving the party from further obligation or liability under that contract.
<b>state agency</b>	A part of the executive branch of the government of the State of California, including the Governor's office, agencies, departments, boards, and commissions.
<b>subvention contract</b>	See <i>local assistance contract</i> .
<b>Target Area Contract Preference Act (TACPA)</b>	TACPA (GC § 4530 et seq.) provides preferences for contracting opportunities in distressed areas.

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